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CASUALTIES OF WAR: CHILD SOLDIERS AND THE LAW

HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

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CASUALTIES OF WAR: CHILD SOLDIERS AND THE LAW

TUESDAY, APRIL 24, 2007

U.S. SENATE,
SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 10 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chairman of the Subcommittee, presiding.

Present: Senators Durbin, Feingold, Whitehouse, and Coburn.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chairman DURBIN. This hearing will come to order. This is the Subcommittee on Human Rights and the Law. Our hearing today is entitled "Casualties of War: Child Soldiers and the Law."

In Italy, long ago, a young boy who followed the knights into battle on foot was known as "enfante," collectively as the "enfanteria." It was this Italian "enfanteria" which became our English word "infantry."

Good morning and welcome to "Casualties of War: Child Soldiers and the Law," the third hearing of the Subcommittee on Human Rights and the Law. After a few opening remarks, I will recognize other Senators in attendance for opening statements, and then we will turn to our witnesses.

This is the first time in Senate history there has been a Subcommittee focused on human rights, and this is the first ever congressional hearing on the urgent human rights crisis of child soldiers. That fact alone demonstrates the need for this new Subcommittee.

As this hearing's title suggests, during times of war both the rule of law and children are victims. There is a clear legal prohibition on recruiting and using child soldiers, and yet around the world, hundreds of thousands of boys and girls are used as combatants, porters, human mine detectors, and sex slaves. While most serve in rebel or paramilitary groups, some government forces use child soldiers as well. In countries like Burma, Uganda, and Colombia, children's health and lives are endangered, and their childhoods are sacrificed.

I would like to begin this hearing with a brief video that will provide some background on the child soldiers crisis. Look very carefully at the faces of these combat-hardened soldiers.

[DVD played]

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Mr. BEAH. "When the war began, everything changed. I lost my immediate family, you know, which is sad. They were killed in the war."

Ms. BECKER. "There are many different ways that children end up as solders. Some of them were literally recruited by force and taken at gunpoint or kidnapped from their homes in the middle of the night. Other children join in groups out of desperation."

Mr. BEAH. "In the beginning, it seemed, you know, it was a place to go for safety. They provided us food, shelter, some basic necessities, and we helped in the kitchen. But our relationship quickly changed to being forced in this war. There was a constant awareness about, you were either in the war front fighting or they were killing somebody in front of you to further traumatize you. It's not just a child carrying a gun, that's a child soldier."

Ms. BECKER. "Child soldiers can include kids who are working as messengers, as guards, as spies. They could be cooks in a military camp. But too often, child soldiers are actually combatants on the front lines of combat. They could include an 8-year-old recruited by paramilitaries in Colombia. It includes young boys in Burma, recruited, you know, into the National Army. It could be girls recruited by the Lord's Resistance Army in northern Uganda. For a lot of girls, the burden is an extra one. They are not only used as combatants and for all the support roles that boys normally fill, but oftentimes they're sexually exploited."

Mr. BEAH. "It's not accepted to recruit children at all. As a child, we are caught up in this madness. It limits you from knowing yourself as a human being and it causes you suffering, basically. It just brings suffering to everyone."

Ms. BECKER. "Currently in the world there about 20 countries where children are actively fighting. In 10 of those countries, governments are involved either by recruiting children directly into their own armed forces or by supporting militias or paramilitaries that use children. Of these 10 countries, 9 of them are currently receiving U.S. military aid. This is an opportunity for the U.S. to use its leverage and its influence as a military super-power to bring pressure against these governments to ensure that they take the action that is needed to keep children out of their forces and to demobilize children in their ranks."

Mr. BEAH. "These are not some kind of other human beings. They're the same as anyone in America, in Europe, anywhere. They're children whose lives are being taken away most times, some of them whose childhood is taken away from them, and that's—they can be—you know, things can be done to prevent that."

Ms. BECKER. "It has to be crystal clear that using children in warfare is unacceptable, and that anyone who does it is going to have to pay a price."

[end video]

Chairman DURBIN. Today we will discuss the tragedy of child soldiers and why the law has failed so many young people around the world.

Cicero wrote, "In times of war, the law falls silent." The American legal system rejects that notion. There is no wartime exception to our Constitution. International human rights law, created pri-

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marily by Americans and based largely on American legal principles, take the same position. Fundamental rights must be protected, even during wars or other armed conflicts.

Yet, so often in times of war or perceived threat, human rights are sacrificed. No better example exists than the tragedy of child soldiers. The law provides special protections to children, the most vulnerable members of our society, but during wars they are often the most exploited.

Over 110 countries, including the United States, have ratified the Optional Protocol to the Convention on the Rights of Child, which prohibits the recruitment and use of child soldiers. But if the law is not enforced, it is meaningless. This Subcommittee has found similar problems when it comes to genocide and human trafficking. When there is no accountability for violating the law, governments and rebel forces can violate human rights with impunity.

During today's hearing, we will discuss legal options for holding accountable those who recruit or use child soldiers. The Special Court for Sierra Leone is prosecuting nine people for using child soldiers, and the International Criminal Court's first prosecution is against Thomas Lubanga of the Democratic Republic of Congo for recruiting and using child soldiers. These are positive developments, but they pale in comparison to the scale of the child soldier crisis. The average perpetrator runs very little risk of being prosecuted.

One option we will discuss today is for national courts to play a greater role in prosecuting perpetrators. I am sorry to say that recruiting and using child soldiers is not a crime under U.S. law, so the U.S. Government is unable to prosecute perpetrators who are found in our country.

Immigration law is another important tool for holding individual perpetrators accountable. Today we will discuss whether the U.S. Government has sufficient authority to deport or deny admission to an individual who has recruited or used child soldiers.

Governments must also be held accountable. That is why Senator Sam Brownback and I have introduced the Child Soldiers Prevention Act of 2007. This legislation would limit U.S. military assistance to countries clearly identified in the State Department's Human Rights Report as recruiting or using child soldiers.

Our bill would ensure that U.S. taxpayer dollars are not used to support this abhorrent practice by government or government-sanctioned military and paramilitary organizations. U.S. military assistance could continue under this bill, but it would be used only to remedy the problem by helping countries successfully demobilize their child soldiers and professionalize their forces.

We must work to eliminate the use of child soldiers, but as long as the practice persists, we must also ensure that the law facilitates and encourages the rehabilitation and reintegration of these young people back into civilian life.

Sometimes the law contributes to the stigmatization of former child soldiers. For example, there are provisions in our immigration laws which brand former child soldiers as terrorists, preventing them from obtaining asylum or refugee status in the U.S. We must give the Government flexibility to consider the unique mitigating circumstances facing these children and allow child soldiers to

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raise such claims when they seek safe haven in our country. We also should support programs that provide psychological services, educational and vocational training, and other assistance to these traumatized young people.

As I have said before, this Subcommittee will focus on legislation, not lamentation. I look forward to working with the members of the Subcommittee to ensure that our laws treat former child soldiers fairly, and hold accountable those who recruit and use them, and that these laws are enforced.

We have to prove Cicero wrong. Even during times of war, the law should never fall silent for the most vulnerable among us—our children.

[The prepared statement of Senator Durbin appears as a submission for the record.]

I would now like to recognize Senator Coburn, the Ranking Member of the Committee.

STATEMENT OF HON. TOM COBURN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator COBURN. Senator Durbin, first of all, let me thank you for your leadership, not just in this area but in others. I truly appreciate it. I have a statement for the record, and I would like to have it submitted.

I have read the summaries and the excerpt on Ishmael. It is very touching. It is tragic. You display leadership beyond all comprehension in your valor and your courage, and I commend you.

I also have in the back of my mind, as a medical missionary in northern Iraq, seeing 9-year-old boys carrying AK–47s. So it is just not in the areas where we have outlined it, but it is in a lot of other areas of the world.

Again, I would re-emphasize my compliment to you, Mr. Chairman, for your leadership in this, on genocide, and other areas. I believe you are going to make a difference, and I am here to help you do that.

Thank you.

[The prepared statement of Senator Coburn appears as a submission for the record.]

Chairman DURBIN. Thank you, Senator Coburn.

I would like to recognize Senator Feingold.

STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator FEINGOLD. Thank you very much, Mr. Chairman. I also thank the Ranking Member. I want to thank you for holding this important hearing and for introducing, along with our colleague Sam Brownback. the Child Soldiers Prevention Act. This legislation is a critical step toward ending the use of child soldiers around the globe by prohibiting U.S. military assistance to countries recruiting or using child soldiers in hostilities.

I would also like to thank all the witnesses here today who have experienced or witnessed what child soldiers are forced to endure and who each devote and have already devoted tremendous time and energy to fighting injustice. Thank you for coming to teach us

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about this tragic practice, one that has gone on far too long in too many places.

The Child Soldiers Prevention Act takes a multifaceted approach to dealing with this problem and encourages more robust programming for the demobilization, disarmament, and rehabilitation of child soldiers in the communities from which they come. I am please to cosponsor this bill because I feel very strongly that the United States must do more to end the exploitation of children, whatever form this abuse takes and wherever it occurs. By helping to ensure that U.S. military assistance is only provided to countries whose policies respect human rights, this bill will send a strong message that the use of child soldiers is not acceptable.

The exploitation of children violates the most basic human rights of one society's most vulnerable populations, and yet for far too long, children have been not only the passive victims of military campaigns, but also active if unwilling participants. In Burma, Laos, Sri Lanka, Colombia, and particularly in African countries like Uganda, Sudan, Democratic Republic of Congo, children as young as 8 are routinely abducted and forced to participate in acts of extreme violence, sometimes against their own families. They are forced to carry out murders, mutilations, and other human rights abuses, even as abuses are inflicted upon them.

Many child soldiers are also subject to coerced drug addiction, physiological manipulations, and sexual abuse. At least one-third of the estimated 300,000 child soldiers today are girls who are often enslaved for sexual purposes by militia commanders.

Even when hostilities cease, these children continue to suffer the loss of their childhood, loss of their connection to their families and to their communities and to the tools that are necessary to pursue a nonviolent life. Often uneducated, traumatized, and stigmatized, many of these young people remain trapped in cycles of brutality and abuse long after the militias are disbanded.

In the past two decades, as the Chairman has indicated, the use of child soldiers has gone from being merely morally reprehensible to being a criminal violation of international law. The U.S. has demonstrated its commitment to ending the use of child soldiers around the world by ratifying and implementing the Optional Protocol to the Convention on the Rights of the Child, on the involvement of children in armed conflict, and last winter, Congo's National Assembly transferred a former militia leader to the International Criminal Court to face charges of recruitment of child soldiers.

Next month—and this is the case that I am most familiar with, having been there and watched this, the case of Sierra Leone—the Special Court of Sierra Leone is expected to deliver the first two convictions on charges of enlisting children to actively participate in hostilities, which the Court considers "a serious violation of international humanitarian law."

These are all important steps across multiple levels toward ending impunity for this reprehensible practice. The conscription and abuse of child soldiers is not new, but a growing awareness of what these young people are forced to endure and the lasting damage cause requires that we work diligently here at home as well as in the international community to monitor and end the use of child

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soldiers, hold governments accountable for their violations, and improve programs of prevention and rehabilitation.

The use of child soldiers poses a threat to the stability and security of communities, countries, and society at large. Any of these abuses should be a priority for the U.S. and for governments around the world, and, again, I sincerely thank you, Mr. Chairman, for your leadership on this and the bill and holding this important hearing to raise awareness and encourage action to protect children around the world.

[The prepared statement of Senator Feingold appears as a submission for the record.]

Thank you, Mr. Chairman.

Chairman DURBIN. Thank you, Senator Feingold.

I would like to ask the witnesses to please stand and be sworn. Raise your right hand. Do you swear or affirm the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BEAH. I do.

Mr. ROTH. I do.

Mr. HUGHES. I do.

Mr. METTIMANO. I do.

Chairman DURBIN. Thank you. Let the record reflect that the four witnesses answered in the affirmative.

Our first witness, Ishmael Beah, is the author of "A Long Way Gone: Memoirs of a Child Soldier." "A Long Way Gone" is a No. 1 New York Times best seller, currently featured at your local Starbucks. For those who have not read this important book, I urge you to do so.

Mr. Beah is a former child soldier, but he is much more than a victim or a survivor. He had the courage, as Senator Coburn has said so well, and the resiliency of spirit to share his horrific experiences with the world. He has transcended these experiences to become one of the world's best-known and most effective anti-child soldier advocates.

Mr. Beah was born in Sierra Leone in 1980. He moved to the United States in 1998 and finished his last 2 years of high school at the United Nations International School in New York. In 2004, he graduated from Oberlin College with a B.A. in political science. Mr. Beah is a member of the Human Rights Watch Children's Rights Division Advisory Committee. He has spoken before the United Nations, the Council on Foreign Relations, and a lot of other places.

Mr. Beah, thank you for taking time off from your successful book tour to come here. It is this Committee's distinct honor to have you with us today. Please proceed with your opening statement.

STATEMENT OF ISHMAEL BEAH, AUTHOR, "A LONG WAY GONE: MEMOIRS OF A BOY SOLDIER," NEW YORK, NEW YORK

Mr. BEAH. Thank you, Mr. Chairman, and good morning. Good morning to Ranking Member Coburn and Mr. Feingold as well and members of the Subcommittee and everyone present here.

I am here today to tell you about my experiences as one of the thousands of children who was forced to fight as a child soldier in

the Sierra Leone civil war. It isn't easy for me to recount these experiences, so I hope that you can give me your undivided attention. As I speak to you, there are thousands of children from ages 8 to 17 in Burma, Sri Lanka, Congo, Uganda, Ivory Coast, Colombia, just to name a few places, that are being forced to fight and lose their childhoods and their families. They are maimed and they lose their humanity, and these are the fortunate ones. Those who are less fortunate are killed in the senseless wars of adults. I want you to think of them and to simultaneously think about your children between those ages and whether you would want them to be subjected to the kinds of suffering, pain, and victimization that I and others underwent that I am about to describe to you.

I was 11 years old when the war began in Sierra Leone. Prior to that I had a normal life; I went to school, played soccer, went swimming, and did my homework. But after the war started, I remember seeing a tide of people carrying their belongings and their malnourished children walking through the streets of my town every morning. They were clearly on a path to somewhere else. At the time I couldn't comprehend what made those families walk hundreds of miles from their homes, and why they were still terrified and preferred sleeping in the bushes instead of spending the night in my town. War simply wasn't my reality at that time.

A year later, following the attack on my town and having been separated from family, my older brother, a friend, and myself were in Mattru Jong, a neighboring town near my home where we had been waiting for news of members of our families, when we first heard a single gunshot. A few minutes later, we heard many more gunshots coming from all around us. Instinctively we began running. The gunshots made it difficult for us to think, and there was chaos in town as people ran, screaming and trampling whoever was in their way.

As we ran from the sound of the gunshots, we saw children who were alone, shirtless, following the crowd, screaming and crying for their parents. We saw mothers wailing for their lost children with so much pain in their voices that I felt my veins tighten and my skin twitch. But all of their cries were in vain. To stop and help someone was asking for death as the rebels were firing at civilians to stop us from leaving town. Each time the gunshots intensified, my body trembled. A woman running ahead of me was clearly unaware of the trail of blood that followed her—the child she carried on her back had been shot and killed. There were bullets coming from everywhere, every direction, and people were struck down in front of me as I ran for my life.

I was 12 years old and was on the run for several months after the war reached me. I saw dead bodies strewn by the sides of roads, witnessed killings, and passed through abandoned villages where the air smelled of blood, and where vultures and dogs feasted on dead bodies. I had been separated from my older brother during an attack and was now with a group of friends from school.

The news that my family was in the village where I was headed was the only thing that kept me alive during that period. Knowing they were alive and well gave me the strength to continue running, even at times when I would go for a week without eating anything. But when I finally made it to the outskirts of that village, I found

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that the rebels had arrived before me. They attacked and burned the village to the ground. They murdered all of my family and everyone who was there.

Some of the people were shot in the head; others tied and burned alive. Some women and children were locked in houses that were set on fire. Later, after the rebels had left, I began walking in the ruins of the village. But I only went a few paces before my knees gave up under me and I fell to the ground. I was in too much pain and shock to cry; I felt myself beginning to harden. I had lost the strength to carry on. I felt that there was no reason to stay alive anymore.

Not long afterwards, I found myself in a village occupied by the Sierra Leonean Army. At first, my friends and I helped in the kitchen to cook for the soldiers. They gave us food, a place to sleep, some basic necessities, and a feeling of security. But after a while, the soldiers announced that they wanted to recruit more able bodies as they had lost many men to the rebels who constantly tried to attack the village we were staying in. We were told that our responsibilities as boys were to fight in this war or we would be killed. I was 13 years old. Neither my friends nor I had any choice. It was either join or be killed. We had no family and no other means of survival. We were forcibly recruited and taught how to use the AK–47s, M–16s, machine guns, G3s, rocket propelled grenades, et cetera, for less than a week, and then we were sent into battle. Many of my friends were shot dead in front of me as many of us didn't know how to use the guns very well and were paralyzed by fear.

I will never forget my first day in battle. We were led into the forest by the adult soldiers to ambush the rebels. My squad had boys who were as young as 7, who were dragging guns that were taller than them as we walked to the front lines. We formed an ambush by a swamp and waited for the rebels. Upon their arrival, the lieutenant ordered us to open fire. I couldn't shoot my gun at first. But as I lay there watching my friends getting killed, the 7-year-old boys crying for their mothers as life departed their little bodies, and the blood from my friends who had died covering my hands and face, I began shooting. Something inside me shifted and I lost compassion for anyone. After that day, killing became as easy as drinking water. I had lost all sense of remorse.

Our commanders gave us drugs—marijuana, cocaine, and Brown Brown: a concoction of cocaine and gunpowder—before battles to anesthetize us to what we had to do. They showed us war movies like "Rambo: First Blood" to fuel our thirst for war and our sense of invincibility. There was also tremendous coercion wherein if the child didn't carry out orders from the commander, that child was killed. The tools used to force us to commit atrocities were the guns. There were too many of them, and they came from all parts of the world. There were M–16s, which are guns primarily made in the U.S; G3s, German weapons; and AK–47s, just to name a few.

For over 2 years, all I did was take drugs, fight, and kill or be killed. At the time it felt as though there was no way to stop. I never imagined that I would be able to leave that life behind, as I had been cutoff from all other realities except for that of the war.

But I did get out of that madness with the help of Children Associated with War, which was sponsored by UNICEF and other nongovernmental organizations. I wouldn't be alive today if it weren't for the presence of nongovernmental organizations that believed that children like myself, due to our emotional and psychological immaturity, had been brainwashed and forced to be killers, and above all, that we could be rehabilitated and reintegrated into society. Healing from the war was a long-term process that was difficult but very possible. It required perseverance, patience, sensitivity, and a selfless compassion and commitment from the staff members at my healing center. Effective rehabilitation of children is in itself a preventive measure, and this should be the focus, not punitive measures against children that have no beneficial outcome for the child and society.

I and many others are living proof that it is possible for children who have undergone and experienced such horrors to regain their lives and become ambassadors of peace. My experience and those of other survivors exemplifies the resilience of children and the capability of the human spirit to outlive life's worst circumstances, if given a chance and the right care and support.

In the United States, many people criticize the United Nations, its affiliates, and generally NGO's. For some of us these are the only organizations that are willing to speak for our plights, to raise awareness about our sufferings, and to help us recover when no one comes to our aid. Their work must be strengthened rather than chastised.

In, addition it is important and life saving not only to have international legal standards that ban the use of children in war, but they must be strengthened and supported by nations affected and those not affected by these appalling tragedies. With the presence and enforcement of these legal standards, United Nations and NGO workers will have the courage and conviction to confront commanders who use children in war and ask them to release those young fighters. If such legal standards hadn't been in place, I wouldn't be here. I would be dead. But the problem continues, which is why I urge you to join in prevention efforts by supporting the prosecution of those who recruit children; strengthening international laws to ban the use and sale of small arms, a good number coming from the United States, that end up in the hands of children; and, finally, condemning and curtailing all support to nations that recruit children or allow such practices to occur on their territory.

One thing that history has taught us is that when we ignore such problems as the use of children in war, they become bigger and more complex problems that later affect us and that we then might be unable to solve. If you do not help these children now, they will grow into adults who will become the leaders of their nations who will have no understanding of ethical and moral standards, and, ladies and gentlemen, whether you like it or not, your children, the future leaders of this country, will have to face them and deal with them.

When you go home tonight to your children, your cousins, and your grandchildren and watch them carrying out their various childhood activities, I want you to remember that at that same mo-

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ment, there are countless children elsewhere who are being killed, injured, exposed to extreme violence, and forced to serve in armed groups, including girls who are raped—leading some to have babies of commanders—all of them between the ages of 8 and 17. As you watch your loved ones, those children you adore most, ask yourselves whether you would want these kinds of suffering for them. If you don't, then you must stop this from happening to other children around the world whose lives and humanity are as important and of the same value as all children everywhere.

In conclusion, I would like to add that yesterday I was involved for the first time in an aspect of advocacy for former child soldiers in a way I have not been before. I testified in an immigration court hearing in New York City on behalf of a former child soldier from Cote d'Ivoire. I was called as a witness both because of my personal experience as a child soldier as well as my knowledge on the general conditions child soldiers face all over the world.

Similar to the stories of many former child soldiers, the young man on whose behalf I testified has real promise. I know from my work with the attorneys on his case that he is a highly intelligent and very decent person, despite what he was forced to participate in during the conflict in his home country.

Yesterday was one of the few bright days this person has had in many years. The judge granted his asylum claim because of the position taken by this country's own government, though it is far from certain that this former child soldier is in store for a happy ending here in the United States. Sadly, and really, inexplicably, the Department of Homeland Security already indicated it very well may appeal the judge's grant of asylum. For the entire case, the Department of Homeland Security has maintained that this young man, who at age 15 was forcibly taken by rebels who fed him massive amounts of drugs and political rhetoric, while compelling him at, in essence, gunpoint to train and take up arms, that this young man is actually himself a persecutor. In taking this extreme position, the Government has ignored the international consensus that these children generally are victims, not persecutors. And because the Government has taken this view, this young man was detained for almost the entire 6 months since he came to the U.S. seeking asylum. He was kept in an adult facility outside of New York City and brought to court in chains and handcuffs. I saw this for myself yesterday. He was treated like a criminal. His decriminalization, if you can call it that, was undertaken in a jail in the U.S. His crime—he wanted to escape a war that destroyed his family and his childhood.

I mention this case because I encourage the members of the Committee to consider the wider scope of the issue of child soldiers. I, of course, applaud the Committee for its efforts and interest in this area. We need, though, the most holistic approach possible if the children are to be saved. Not only do we need to pressure governments to immediately cease its use of child soldiers, we need to also convince our own Government to provide the humanity so sorely lacking by not detaining those former child soldiers fortunate enough to come to the U.S. And we certainly should ensure that the U.S. Government does not accuse these victims, such as

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the young man who will now have to fight this appeal and continue to live in fear of being sent back to a war zone.

I thank you very much for your time.

[The prepared statement of Mr. Beah appears as a submission for the record.]

Chairman DURBIN. Mr. Beah, thank you very much for your testimony. We will have other statements from members of the panel, and then we will ask a few questions.

Mr. Kenneth Roth is the next witness, He is the Executive Director of Human Rights Watch, a post he has held since 1993. From 1987 to 1993, Mr. Roth served as Deputy Director of Human Rights Watch. Previously, he was a Federal prosecutor in the U.S. Attorney's Office for the Southern District of New York, and the Iran-contra investigation of Washington. He worked in private practice as a litigator, and graduated from Yale Law School and Brown University. Mr. Roth was drawn to human rights causes in part by his father's experience fleeing Nazi Germany in 1938.

Mr. Roth, thank you very much for joining us, and we look forward to your testimony.

STATEMENT OF KENNETH ROTH, EXECUTIVE DIRECTOR, HUMAN RIGHTS WATCH, NEW YORK, NEW YORK

Mr. ROTH. Thank you very much, Mr. Chairman and Ranking Member Coburn. Human Rights Watch welcomes the creation of this standing Senate Committee focused on human rights and the law, and applauds your vision in particular, Senator Durbin, for recognizing the important contribution that this Committee can make. We are glad to help in launching the Committee and its important work. I also want to thank you for focusing on the very important issue of the exploitation of children as soldiers around the world and for giving Human Rights Watch the opportunity to address the Committee today.

I would like to focus my testimony on two aspects of the child soldier issue: first, the importance of prosecuting people who recruit or use child soldiers; and, second, opportunities for the United States to use its military assistance program as leverage to discourage the recruitment or use of child soldiers.

In the last decade, significant progress has been made in establishing criminal responsibility for the recruitment or use of child soldiers. A prohibition against recruiting and using children under the age of 15 in hostilities was first codified in the 1977 Additional Protocols to the Geneva Conventions. Then, in 1998, governments negotiating the so-called Rome Statute of the International Criminal Court recognized that the prohibition had achieved the status of customary international law. They agreed that the conscription, enlistment, or use in hostilities of children under the age of 15 should be considered a war crime under the Court's jurisdiction, whether carried out by members of national armed forces or by non-state armed groups.

In May 2004, international jurisprudence on this issue advanced further when the Appeals Chamber of the UN-backed Special Court for Sierra Leone ruled that the prohibition on the recruitment and use of children under the age of 15 had crystallized as customary

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international law prior to 1996, and the Court found that the individuals responsible bear criminal responsibility for their acts.

With these developments, individual commanders now have begun to be prosecuted for the crime of recruiting and using child soldiers. As you mentioned, Senator Durbin, the use of child soldiers is included in the indictments against each of the nine defendants currently being tried by the Special Court for Sierra Leone, including former Liberian President Charles Taylor. The International Criminal Court also recently initiated prosecution of Thomas Lubanga of the Democratic Republic of Congo for the recruitment and use of child soldiers, paving the way for the first ICC war crime trial. In addition, the ICC has indicted the leadership of Uganda's Lord's Resistance Army for the same offense.

As trials proceed and convictions are handed down, these prosecutions will send a clear message that commanders cannot recruit children without serious consequences. Even though no deterrent is ever perfect, these prosecutions offer the possibility of saving substantial numbers of children from the horror of combat and military recruitment.

Unfortunately, few countries have criminalized the recruitment or use of child soldiers under their national criminal codes. The U.S. Criminal Code, for example, does not address the issue, even of an individual who has recruited or used child soldiers in another country and then seeks safe haven in the United States.

Mr. Chairman, I urge this Committee to consider action to amend the U.S. Criminal Code to make the recruitment or use of children in violation of international law a punishable crime, whether committed here or abroad, and to establish jurisdiction over U.S. citizens or non-nationals present in the United States who commit this crime.

Precedent for such an approach already exists in Federal law, including the torture provisions in the U.S. Criminal Code and the Genocide Accountability Act, which you yourself introduced and that was adopted by the Senate earlier this year. Both of these measures allow for the prosecution of either U.S. citizens or non-nationals present in the United States, even if their crimes were committed outside of the United States.

The second issue I would like to address is the opportunity that the U.S. Government has to use its military assistance programs as leverage to end other governments' recruitment or use of child soldiers.

According to the most recent State Department Country Reports, of the 20 countries around the world where children are currently fighting as soldiers, governments are implicated in 10. For example, in Colombia, paramilitaries with longstanding ties to Colombian military units recruit children as young as 8 to fight against the guerrillas, sometimes forcing them to mutilate and kill captured rebels.

In the Democratic Republic of Congo, Human Rights watch found just last month that hundreds of children had been recruited by the newly formed Congolese army brigades in North Kivu and are being deployed to the front line in operations against local armed groups.

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In Uganda, the rebel Lord's Resistance Army has abducted thousands of children into its ranks, but children have also been found in the ranks of the Ugandan national army. Last year, the U.N. reported that more than a thousand children had been recruited into government-sponsored local defense units in Uganda's northern districts.

In Sri Lanka, as the civil war has escalated over the past year, an armed group linked to the government, known as the Karuna Group, has abducted hundreds of boys to fight the rebel Tamil Tigers, who also continue to recruit children.

Mr. Chairman, Human Rights Watch strongly supports the Child Soldiers Prevention Act of 2007, introduced last week by you and by Senator Brownback. The Act would restrict U.S. military assistance to governments that have been identified by the State Department's own reporting as using child soldiers, whether in their own armed forces or by supporting paramilitaries or militias that themselves use child soldiers. While the amount of U.S. military assistance is often not large, the loss of U.S. military backing would be a powerful political blow to these governments and a strong motivator to end any involvement in child recruitment.

Although many child soldiers are found in rebel armies that receive no U.S. support, there is little hope of curbing child recruitment by rebel armies as long as they can justify their use of children by pointing to child recruitment by governments. The stronger we can make the international norm against the use of child soldiers, the harder it will be for rebel groups to pay the political price of using them. That norm-building process must begin with governments.

In conclusion, the Child Soldiers Prevention Act would provide a powerful incentive to governments to end the recruitment and use of child soldiers and to demobilize children from their armed forces. It would also assure the American people that U.S. tax dollars are not supporting the exploitation of children as soldiers.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Roth appears as a submission for the record.]

Chairman DURBIN. Thank you very much, Mr. Roth.

Our next witness is Anwen Hughes, who is an attorney with Human Rights First. She is senior counsel of that organization's Refugee Protection Program. She helps oversee Human Rights First's pro bono representation for indigents seeking asylum. Previously she was a staff attorney for Legal Services in New Jersey, where she represented recipients of public benefits and coordinated legal services for the elderly. Ms. Hughes received her J.D. from Yale and her B.A. from Yale as well.

Ms. Hughes?

STATEMENT OF ANWEN HUGHES, SENIOR COUNSEL, REFUGEE PROTECTION PROGRAM, HUMAN RIGHTS FIRST, NEW YORK, NEW YORK

Ms. HUGHES. Thank you very much. Chairman Durbin, Ranking Member Coburn, and members of the Subcommittee, thank you for inviting me here today to offer the views of Human Rights First on how our immigration laws are treating former child soldiers and

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those who conscript them. On behalf of Human Rights First, I also want to thank you, Chairman Durbin, for your leadership in the creation of this new Subcommittee which acts as an important signal that this country understands its human rights treaty obligations as part of our law.

There has been testimony already today on ongoing efforts and progress that is being made to prohibit the use of child soldiers and to hold accountable those who abuse the rights of children. And with the possible exception of people who conscript children for service into their own national armies, our immigration laws also provide ample basis for excluding those who recruit or use child soldiers in violation of international law. That is the good news.

The bad news is that those same provisions, which are bars based on very broad definitions of terrorist activity and terrorist organizations, are also being interpreted to exclude from protection children who escape from being soldiers and seek safety in the United States. Even as we work to prohibit and to condemn the use of child soldiers as a violation of children's rights, our immigration laws are being interpreted to target the victims of those same abuses and exclude them from protection.

Our organization provides legal representation to refugees seeking asylum in this country, and I remember in the late 1990's interviewing several young people who, while still teenagers, had been taken captive by the RUF in Sierra Leone. This was the rebel army there at the time. In some cases, these rebels had killed the children's entire families before abducting the kids, and when they managed to escape from the rebels, the children were targeted by terrific civilians and also by government forces as suspected rebels. Many people in this situation fled into neighboring Guinea, but then Guinea turned on its refugees, and some of them, with nowhere else to turn, fled to the United States.

At that time, some were granted asylum here and were able to begin new lives. But they would not be so lucky now. These kids' forced service to the rebels consisted of hard labor for the most part, carrying heavy crates on forced marches through the forest, and in the case of girls, getting raped. But even as the international community has worked to prohibit the use of child soldiers, not only in active combat but also as cooks, as cleaners, as porters, as sex slaves and so on, our definition of "terrorist activity" under the immigration laws has expanded to include all of these activities, so that even kids who are lucky enough to be forced only into non-violent activity are now being tagged with the same terrorist label as their former captors. This is psychologically harmful to all refugees, but particularly to child soldiers, who often face the same stigma in their home communities.

The second problem former child soldiers face is that the Government agencies that decide asylum and refugee claims, as in the case that Ishmael was referring to earlier, are failing to recognize any defenses or exceptions to this wildly expanding statute. So the children who were forced to do what they did or were too young at the time to appreciate what they were doing, or both, will be barred from protection despite these facts.

This is a problem of interpretation, not a problem with the current statute, or at least it should not be. Defenses and exceptions

should be considered to be implicit in the statute, and, in fact, up until around 2004, a number of lawyers representing the Department of Homeland Security in Immigration Court were agreeing with this position in litigation. Unfortunately, the current trend has been toward a unified refusal to recognize that the terrorism bars were not meant to target 12-year-olds or, for that matter, adults who act under duress.

I also want to emphasize that in talking about child soldiers wrongly subject to exclusion under these provisions, we are talking about the children who have been rehabilitated and who are seeking the protection of refugee status or asylum so that they can continue to put their lives and their psyches back together. We are talking about people no one is seriously arguing pose a threat to us. Anyone who actually does pose a threat to the security of this country is barred from asylum under a separate provision of the law.

While authority exists under the statute to waive some of these provisions as an unreviewable matter of executive discretion, the implementation of that waiver authority has been extremely slow and also incomplete. Also, it does not cover any child who is actually a combatant, who actually fought for a rebel army. And, finally, there is no waiver authority for some of the other bars that child soldier cases sometimes trigger.

For example, our organization has been representing a young man who was jailed and tortured at the age of 13 by his own government, which then forced him into its national army. He was 14 years old at the time. He was sent to the front where he was made to shoot at people in the distance, some of whom may have been civilians. He does not know if he hit anybody. He does know that another child who refused to shoot was executed in front of his eyes, as was another child who tried to escape. This young man, while still a child, fled to the United States and told our Government all about this. The Department of Homeland Security has been opposing his application for asylum for years on the grounds that his actions as a child and under duress make him a persecutor of others. There is no waiver for this bar to protection. This young man is a great person, and he has done a remarkable job of putting a life together for himself here. But he has no security, and everything he does he does under a cloud of deportation hanging over his head.

We will soon be filing an application for asylum for another former child soldier whose case is likely to end up in indefinite limbo based on the erroneous interpretation of these bars to asylum. I cannot tell this child how long it will be before this problem is fixed and she can really feel save here-6 more months, 1 more year, 2 more years? That is a long time when you are 15 years old.

Those who use child soldiers often use atrocious means to convince them that they can never go home. Right now our immigration laws prevent them from finding shelter here either. This situation urgently needs to change. If the relevant Federal agencies will not recognize defenses and exceptions as inherent in the current statute, Congress should act to make clear that its intention in passing these laws was not to turn the very harm refugees have

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suffered into a ground for excluding them from the protection they need.

Thank you.

[The prepared statement of Ms. Hughes appears as a submission for the record.]

Chairman DURBIN. Thank you.

Our last witness is Joseph Mettimano, Director of Public Policy and Advocacy for World Vision. I might just add parenthetically that as I have traveled, I often ask in the countries where I travel about the NGOs. World Vision enjoys a very good reputation for excellent work around the world.

Mr. METTIMANO. Glad to hear it.

Chairman DURBIN. I am glad you are here today representing them.

Prior to joining World Vision, Mr. Mettimano served as the Deputy Director of Public Policy and Advocacy with the U.S. Fund for UNICEF. Before that, he held other positions in the nonprofit sector and the broadcasting industry. Mr. Mettimano holds a B.A. from Temple University.

Thank you for joining us. Please proceed.

STATEMENT OF JOSEPH METTIMANO, DIRECTOR, PUBLIC POLICY AND ADVOCACY, WORLD VISION, WASHINGTON, D.C.

Mr. METTIMANO. Thank you. Good morning, Mr. Chairman. I want to thank you and Senator Coburn for inviting me to testify at this very important hearing, but more importantly, I want to thank both of you for your ongoing leadership and commitment to protect children, both here in the United States and around the world.

I also want to note that it has been a real pleasure working with your staff on this bill, Senator Durbin. Shannon Smith has just done a fantastic job stewarding this bill through the process.

My colleagues on the panel already have provided a wealth of information on the topic of child soldiers and illuminated both the legal and very personal impact that this issue has around the world. My goal today, hopefully, is to provide the Committee with the perspective of an operational humanitarian organization on this topic. As you noted in your comment, around the world, World Vision is working in communities where this is a problem, so I would like to talk a little bit about our programs and what are some of the challenges that we encounter in addressing this issue. In addition, I would like to just provide a few thoughts as a child advocate here in Washington, D.C.

First, let me just give a quick profile of the organization that I represent. World Vision is a Christian humanitarian organization. We were founded in 1950, and today World Vision is the largest, privately funded, international humanitarian organization based in the U.S. and one of the leading nongovernmental organizations in the world. We have 23,000 staff serving the poor in nearly 100 countries, and in 2006, we provided assistance to more than 100 million people around the world.

As a child-focused organization, it is both imperative and inescapable that we address several forms of child exploitation, everything from sexual exploitation through exploitative child labor and

including the issue we are talking about today—child soldiers. Our work with child soldiers is really focused primarily on prevention, demobilization, rehabilitation, and reintegration of those who are impacted by this problem.

Needless to say, it is an exceedingly difficult problem to address in the field. As has already been noted, many of these children are forcibly recruited by either rebel groups or state-run military organizations. Others may not but continue to serve in armed conflict nonetheless. Many of these kids are exploited as a result of their poverty. In some communities, children have very few options. They may not be able to get three square meals a day unless they are participating and joining one of these military groups. So oftentimes, as a result of their poverty, they are exploited and enticed to join one of these military groups. It is really just an unfortunate situation for many kinds in these communities.

I want to note that children suffer higher mortality rates, disease rates, and injury rates in combat situations than adults so. And the lasting effects of war and abuse may remain with these kids for long periods of time after the shooting stops.

Both girls and boys often are stigmatized and traumatized by their experience, as many are forced to commit atrocities against their own families and their own communities. Sometimes they are left without a place to go when the bullets stop flying.

Given the horrific nature of this abuse, there are a range of interventions that are needed, some of which World Vision is doing and many of our partners are engaging in. First and foremost is the need to identify who these kids are and get them demobilized. Getting them away from conflict situations and providing them with protective shelter so they are protected from the organizations that they are engaged with.

Second, obviously these kids require a substantial amount of medical treatment and psychosocial support. A number of children who are in our programs have bullet wounds, knife wounds, other battle injuries. But more often than not, they all have psychological trauma.

Third, if reintegration is possible, that is the next step in the process, preparing these kids to return back to normal life. That is done through peer counseling, job training, and informal education, most of which World Vision is engaged with. And then we start the process of family tracing and reunifications, hopefully trying to get these children back with their families and in their communities.

And, fifth, it is very important that we address the very specific needs of the girls who have been affected by armed conflict. As has already been noted, many of these girls serve double duty, both as combatants and as sex slaves to rebel commanders or other military leaders in the units that they are a part of. Several of these girls end up with children as a result of this exploitation, and many also have sexually transmitted diseases.

For World Vision, prevention is the key. We believe that prevention is the absolute best intervention. We would rather see these children not exploited in the first place rather than having to do long after-care.

One of our strongest programs is located in northern Uganda, actually, in Gulu, a northern district in Uganda. World Vision runs

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the Children of War Program, which is a counseling center for former child soldiers and adults who were abducted as children. It is the largest and most well established rehabilitation center in all of Uganda. It opened in 1995, and the center provides abducted children with temporary shelter, AIDS education, food, medical treatment, psychosocial counseling, vocational counseling, spiritual nurture, and helps to facilitate the smooth reunion of the children with their families. I am proud to say that more than 15,000 children have gone through our center since it opened in 1995.

Based on our experience, let me give you an idea of the kinds of situations that we deal with. I am sure the panel and members of the Committee are likely aware of the 21-year conflict that has been going on in northern Uganda. This conflict has terrorized the region, destroyed the lives of an entire generation of children, and hindered overall development of the country since it started. According to Human Rights Watch and the Coalition to Prevent Child Soldiers, the northern Uganda conflict today has one of the highest rates of child soldier usage in the world.

For the past 21 years, the children of northern Uganda have been made pawns in a deadly game of war between the Lord's Resistance Army—the LRA—and the Government of Uganda. Well more than 25,000 children have been used as child soldiers in this conflict since its inception.

Senators, indeed the face of this war in northern Uganda is children. More than 80 percent of the LRA is made up of abducted children at this time. In addition, there are allegations that the Ugandan Army—or UPDF, Ugandan People's Defense Force—has used child soldiers as well. For years, there have been mass hostage takings by the LRA, where tens of thousands of children have been abducted and forced to become soldiers. "Kill or be killed" is the reality for every one of these children. And in the case of girls, as we mentioned, being sexually exploited comes along with the territory of being abducted into the LRA.

This environment has resulted in stories like that of "William," an 11-year-old boy in Uganda who was forced to kill five people as part of his indoctrination with the LRA, with which he served for 2 years. The first time William killed someone, he, along with other children, were forced to bite to death one child who had attempted to escape from the LRA. After the victim died of blood loss and shock from the biting, William and others were then required to swallow the dead child's blood. It was a warning to him and others not to try to escape, or they would face the same torture.

I also want to tell you about a friend of mine by the name of Grace Akallo, a former child soldier who testified on behalf of World Vision before the U.S. House of Representatives last year. In October 1996, the LRA attacked St. Mary's College, a girls' boarding school in Aboke Town in northern Uganda. They abducted 139 girls, including Grace, and she was 15-years-old at the time. She and the other girls that were captured were then trained on how to assemble, disassemble, clean, and use guns. They were held in slavery by both the northern Sudanese Government and by the LRA. Grace and her classmates were forcibly given to senior LRA commanders as so-called wives and then repeatedly raped. Five of Grace's friends died in captivity, many are infected with HIV/AIDS,

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and 11 years later, two of her friends are still held hostage by the Lord's Resistance Army. Fortunately, both William and Grace eventually escaped and received support.

Right now, with the support of the United Nations and countries from the Africa region, peace talks are underway between the warring parties, so-called Juba peace talks. We are very hopeful that this may lead to peace, but after 21 years of death, destruction, and broader regional instability, the international community needs to maintain an active presence and support for these talks. In particular, all parties involved have requested the presence of the U.S. Government at the talks in Juba.

Uganda is just one chapter in this story, Senator.

Unfortunately, similar situations exist around the world. Today an estimated 250,000 children are serving in armed conflict in 20 countries. These child soldiers include both boys and girls, sometimes as young as 8 years old.

The challenges for NGO's like World Vision and others are many. First and foremost, just our limited access to getting to these kids, limited influence in getting these children demobilized. We are operating in a war zone. It is very difficult to get these kids out of combat.

Second is implementing programs in a conflict setting; ability to successfully get to resources, ability to operate safe centers is very challenging.

Third, you can imagine the psychological and physical trauma that these victims endure. Sometimes it is well beyond our means to be able to successfully bring about a full healing to many of these children.

And then there are the many other problems: preventing the child from getting re-recruited if they leave our center; protecting children from retaliation, keeping in mind that they committed atrocities against their own communities and their own families; and then reunification of children with their communities.

More specifically, the challenges for reintegration include just the continued conflict and instability in their respective regions, lack of educational and vocational opportunities, and the situation of girls who now have children as a result of the conflict; lack of adequate funding for psychosocial programs and community followup. Followup is also imperative. Again, all of this is occurring in the backdrop of violent conflict.

While organizations like World Vision can continue to work to protect and rehabilitate children, our ability to mitigate and resolve conflict is quite limited. We can help bring physical and emotional wounds to healing, but we cannot stop the war or change the policies of the governments or organizations that use children in conflict.

From our perspective, the international community, especially world leaders such as the U.S. Government, can and should play a more engaged role through diplomatic efforts, program funding, assisting peace negotiations, and leveraging resources.

Over the years, I am glad to say that the U.S. Government, and the U.S. Congress in particular, has provided millions of dollars in program funding, ratified treaties, and passed relevant resolutions

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For example, the U.S. Government is a state party to the Optional Protocol to the Convention on the Rights of the Child. The United States is also a state party to ILO Convention 182. In addition, the United States has enacted the Trafficking Victims Protection Act of 2000. This along with a range of resolutions passed by both the House and the Senate have been helpful. However, most recently, actually last week, the U.S. Senate under your leadership, Mr. Chairman, introduced another piece of legislation that provides a key element of a strategy to combat this problem. As you know, while many child soldiers are found among armed non-state actors, the State Department reports that 10 countries are implicated in the use of child soldiers. Some of these governments recruit children directly into their own armed forces, while others are directly linked to militias that use children in warfare. The U.S. Government provides military assistance to nine of these ten countries, whether it is a small amount of funding for military training or hundreds of millions of dollars in weapons or military systems.

I am very confident that most U.S. taxpayers would agree that U.S. tax dollars should not be used to support the exploitation of child soldiers. Nor should U.S. weapons end up in the hands of children abroad.

You and Senator Brownback have introduced the Child Soldier Prevention Act of 2007 to encourage governments to disarm, demobilize, and rehabilitate child soldiers from government forces and government-supported paramilitaries by restricting various forms of U.S. military assistance to these governments and to get them to end any involvement in this practice.

Chairman DURBIN. Mr. Mettimano, if I could ask you to wrap up.

Mr. METTIMANO. Yes. I am right now, sir.

Rightly, this bill is directed at national governments that receive military assistance to help them professionalize their forces and to ensure that U.S. taxpayer dollars are not used to finance the exploitation of children.

We at World Vision believe this bill will provide strong incentives for foreign governments to end any involvement in the recruitment of child soldiers and, notably, also encourages the U.S. to expand funding to rehabilitate child soldiers around the world.

Mr. Chairman, I applaud you for your leadership on this important piece of legislation and on human rights issues around the world. We at World Vision stand ready to work with you on our common goals.

[The prepared statement of Mr. Mettimano appears as a submission for the record.]

Chairman DURBIN. Well, thank you very much, and as I said earlier, World Vision is a major player in this, and the rehabilitation efforts I have heard about as I have traveled make a big difference.

Mr. Beah, we have thousands of soldiers coming back from war—from Iraq and Afghanistan and other places—and about one out of three of them come back with a condition known as post-traumatic stress disorder. The stress that they have been under in combat, separation from their families, the things that they have witnessed, and the things that they have done haunt them, sometimes for years after they return.

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When I listened to you describe what you had personally been through, the separation from your family, losing your family, the horrible violence that you witnessed, can you tell me whether that type of psychological situation is something that you had to deal with personally?

Mr. BEAH. Yes. Well, I went through rehabilitation for 8 months after I was removed from the conflict, so I had to deal with that. But even, you know, I think a lot of people think that healing from this kind of war is sort of an immediate process. I think it is a long-term process, and with time you learn to live with the memories and you transform them into something positive, which is what I have done. But these things, what I saw, what I was forced to be a part of, are things I will never forget. But I think children who live through this, what they come to learn is that those things become instructional tools for them to know what not to do because they understand deeply what violence truly is and what it does to the human spirit, what it does to communities, and what it does to human beings in general.

Chairman DURBIN. I guess you would have to say that you, despite this terrible experience, have been fortunate since to have a helping hand to put your life back together. Have you been in touch with any of those who were with you, other child soldiers in Sierra Leone? Do you know what has happened to them?

Mr. BEAH. I was in Sierra Leone last year, and I was able to find some friends who had been at the center with me or some that I have known through the war. There are a few who have been able to emigrate to other countries, who live abroad, and there are few living in Sierra Leone who are still going to school. And there are those who, because during the height of the war when I was able to live because of the American family that I was able to get, some who didn't have that opportunity were dragged back into the war again. So some of them are completing another second phase of rehabilitation. So there are some of those instances.

But, you know, I truly believe that if children are given the right care and support and if they are prevented from re-recruitment, they can actually regain themselves. It is not just about healing the child. It is also about creating something substantive for the child after they heal so that they will be able to take charge of their life. I think it is very important.

Chairman DURBIN. Do you know if the people of Sierra Leone are following this prosecution that I mentioned in my opening remarks, where nine people have been accused of using child soldiers and are being prosecuted in the courts of that country?

Mr. BEAH. People are—in the beginning, when the Special Court was formed and the commission, there was a strong interest in it, but I think from my personal experience of it and from the people I have spoken to, when Charles Taylor was moved to the Hague, I think that dealt a blow to a lot of people because I think people wanted that trial to take place in Sierra Leone or in West Africa so that—because that is what has been missing in that subcontinent for a while. The rule of law and justice being administered to people, however big or powerful they are, has failed people since the 1960's. So people wanted that to happen, and that would have helped repair the judicial system. But when that was taken, I think

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a lot of people lost interest in, you know, sort of the effectiveness of this thing. But people are still interested and people—not as many as we would want.

Chairman DURBIN. Ms. Hughes, Senator Coburn and I both thought that after your testimony we should have direct contact with the Department of Homeland Security to ask them about this wrinkle in the law, the PATRIOT Act, that you have talked about that is causing such injustice. And as I understand your testimony, the "material support" language in the PATRIOT Act would lead those who are coerced, such as child soldiers, to be treated the same as those who are coercing. Is that right?

Ms. HUGHES. That is right—I mean, that is wrong, and that makes no sense and that is unfair. But that is the way the law is being interpreted. And that is true not only of the material support provisions in the law, but also in other provisions of the law that are also bars to refugee status, for example, the persecutor bar as well.

Chairman DURBIN. And could you tell me, did I also understand your testimony to say that in some instances the recruiter might be treated more favorably than the coerced child?

Ms. HUGHES. In the particular situation where the recruiter was a governmental recruiter, then there is an interesting wrinkle in the terrorism bars where, although they are extremely broad, the one thing they do require is that the activity, the terrorist activity, be unlawful in the country where it was carried out. And that is being interpreted to exclude governmental conduct, basically.

Chairman DURBIN. Thank you.

Senator Coburn?

Senator COBURN. I am interested in when somebody presents for asylum, what is the availability to those that have not undergone rehabilitation, as they present for asylum, what is available to them? I understand, especially from reading the excerpts of your book, that there is a great impact that happens in the field in terms of rehabilitation with World Vision and others. But what happens if somebody is here for asylum and has not been rehabilitated? What do they do? Does anybody want to answer that? What is available to them? As you outlined, your friend who is being held in chains and is now under—I guess Homeland Security is going to appeal the decision on your friend or the person that you testified for.

Mr. BEAH. Yes.

Senator COBURN. Has he undergone rehabilitation? And what was available to him for that?

Mr. BEAH. In the United States, actually nothing is available because what happens, when he arrived, because his mother was able to get him out and put him on a plane with a fake Swiss passport, and when he arrived, he said, "I want asylum." And they basically called immigration.

So immediately in the U.S., when you arrive with those cases, instead of rehabilitative measures or taking care of you becoming the first step, the first question becomes: Why are you illegal, and how can we deal with that? Not, How can we rehabilitate you and then take care of your case?

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Senator COBURN. So basically we need a special track in this country for children soldiers who are seeking asylum.

Mr. BEAH. Well, not all of them come that are not rehabilitated, but those who—

Senator COBURN. But those that do not—or let's say that you are coming, rehabilitated or not, what we have heard in the testimony from Ms. Hughes and Mr. Roth and Mr. Mettimano is that we do not have a system set to handle this right now in a compassionate, discerning way. What we do is let the harsh words of the law apply very vigorously through somebody's interpretation, intended or otherwise, and so consequently we may pass this bill, but if we do not do anything about changing the actual system on how people come through here and how they are met and how they are dealt with in terms of recognizing what they come from, it is going to be for naught.

So I would like to hear whatever suggestions you might have, and you do not have to do that now, but you might put into writing to Senator Durbin and me what you would see. In other words, given the law, the PATRIOT Act, given also the immigration changes that were there with the REAL ID, what needs to be tweaked to be able to accomplish that in a compassionate way, recognizing that there still may be terrorists in a group of this, but to give us both the compassion we need as a country, but also the protection that we need as a country. I wondered if you might do that for us.

Ms. HUGHES. We would be happy to. There have been legislative measures proposed that would make explicit in the Act the notion of mitigation and defenses and exceptions that we think should be implicit in the Act already. And so that would be an important step not only for child soldiers, but also for other refugees who are facing equally compelling pressure, because we obviously do not want a situation where the child soldier who makes it onto the plan is provided with protection, but the mother who paid money to a rebel group to get his release is barred.

Senator COBURN. Right. And we also want to make sure that somebody coming here for asylum that was a child soldier that has not been rehabilitated, if they get asylum and we do not have a way to help them with the rehabilitation, what have we let loose if somebody has not been through that process, much like Ishmael has?

You know, I read the poignant characterization of you in this adopted family where you were. Was her name Helen? What was the lady's name? I read this last night late, so I am having trouble. She said, "Why don't I become your family?" What was her name?

Mr. BEAH. Esther.

Senator COBURN. Esther. You know, the fact that everybody needs an Esther. Everybody needs an Esther that has gone through that, somebody that is going to reach down in and re-establish human bonding of compassion and caring.

Mr. Chairman, thank you for the hearing. We will have a couple of written questions that we would like to submit, and I very much—and I am going to ask the Chairman to have a hearing with Homeland Security and Immigration here so that we can actually find out why the change in status. Was it totally based on the law?

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And with your recommendations and that hearing, maybe we can actually do the tweaks. We need to hear both sides of the story, but maybe we can do the tweaks to appropriately handle this.

Chairman DURBIN. I thank you, Senator Coburn, and some of the issues raised in the human trafficking hearing, which I know you have seen some reports on, can also be addressed by Homeland Security.

Senator COBURN. I would also like to ask to be named as a cosponsor of the bill.

Chairman DURBIN. I am going to ask unanimous consent for that to occur, and I think I just received it. So you are now a cosponsor of the bill. Thank you very much.

Mr. Roth, a moral dilemma is taking place in Uganda where both sides are exploiting children. How do we achieve peace and justice in those circumstances?

Mr. ROTH. I think that there are many people who falsely assume that you have to grant amnesty in order to have peace, and certainly the murderous Lord's Resistant Army, the leadership that has been indicted by the International Criminal Court, is trying to advance that simplistic view. I think our experience, though, is that peace without justice will not be peace. The best example is to look at what happened in Sierra Leone, where there was initially an amnesty given to the Revolutionary United Front because it said you cannot prosecute us if we are going to have peace. The government gave in, and the rebel group used about 2 years to rearm and relaunch the war with further use of child soldiers and further atrocities. Frankly, that sort of small example can be replicated across the continent.

If you send the signal that no matter how vicious you are, no matter how many child soldiers you enlist and deploy into combat, when push comes to shove and it is time for a peace accord, you just say, "Sorry, you know, no peace unless you give me an amnesty," you are going to end up encouraging that kind of misuse of children again and again and again.

So the only way to have lasting peace in Uganda or lasting peace across the continent is to be serious about this crime that now exists at the international level that we hope will exist now at the national level as well, and to prosecute particularly the leadership who are responsible. This does not mean prosecute every single person who has been involved, but the leadership which has been indicted by the ICC should have its day in court and spend a good long time in prison.

Chairman DURBIN. I will not go into it, but it raises the terrible ethical challenge in Sudan, where I believe the Khartoum government has been reluctant to allow U.N. peacekeepers to come into the Darfur region for fear that they will gather evidence against that same government in terms of their criminal misconduct.

Mr. ROTH. I have heard that argument, but let me, if I could, put it another way. Khartoum got away with murder and mayhem and atrocities for 21 years in southern Sudan, and they said, you know, "OK, we will agree to peace in southern Sudan. Just don't prosecute us for what we did there." And the international community bought that deal, and that paved the groundwork for the atrocities

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that are now taking place in Darfur. Because they got away with it once, they will get away with it again.

The only way to prevent the proliferation of these kind of atrocities is to draw the line and to say when you have committed these crimes, we now have the institution to prosecute you, and you will be prosecuted.

Chairman DURBIN. I certainly hope that everyone feels as I do, which was one of the elements behind the Genocide Accountability Act, that we do not want the United States to be a safe haven for those who are guilty of war crimes anywhere in the world. They have to believe that there is not a comfortable place for them to live in this country, that they can be prosecuted for their misconduct.

Mr. Mettimano, when I listened to Mr. Beah's testimony, he talked about being anesthetized with drugs during much of his experience as a child soldier. And I think about what World Vision is trying to do to try to bring back these young people from the horrible, atrocious lives they have lived and the violence that they have witnessed and perpetrated.

How do you deal with that in addition to drug addiction which may have been created in this same experience?

Mr. METTIMANO. As I noted in my comments, it presents a very difficult challenge and, frankly, many children never fully recover from their experiences as a child soldier, and it is just compounded if drugs are involved because it hinders sort of the cognitive process with kids being able to work through what they experienced, or it can at least protract the process significantly.

Part of our program, both in northern Uganda and other places where we have encountered this, including Sierra Leone, has just included ongoing, intensive drug rehabilitation like you may find in other places. But the process typically is going to last a lot longer because you are dealing not only with drug treatment, but physical wounds that are being healed, deep emotional wounds, depending on the age of the victim, and all that is being done in isolation. Typically there is no family support network around these children, so it is a very difficult and complex process to work through.

Chairman DURBIN. What is your success rate on rehabilitation of these young people?

Mr. METTIMANO. In general, about 98 percent, and in Uganda it has been about 92 percent of the 15,000 that have gone through our center.

Chairman DURBIN. And Mr. Beah tells a story of losing his family during the course of this.

Mr. METTIMANO. Right.

Chairman DURBIN. I would imagine that story is repeated many times by those who are being helped by your organization. So as they leave, still children, where do they go? What is the next step?

Mr. METTIMANO. It depends on the age of the victim. If they are still under age 18, what we try to do is if they can go back to their nuclear family or their community, we try to get them in foster placement basically with another family in their home community or in an area that is near their home so they are still within familiar boundaries.

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If the person is of adult age, we try to give them all the skills that they need to mainstream their life: give them job training skills, we give them informal education, and place them in a place where they will be able to restart their life and they will not be under constant threat of retaliation because of their crimes.

Chairman DURBIN. Mr. Beah, do you know what happened to your captors, those who took you away and made a soldier of you at that early age?

Mr. BEAH. No. I am not sure what happened to them. During the course of the war, there were a few who were killed, but after that, I was removed from it. I do not know what happened to those.

Chairman DURBIN. Well, I would like to say that I am going to wrap up this hearing, but as I said at the outset, we address some very serious and poignant issues in this Subcommittee, but I do not want the Committee hearing to end with people saying, "Isn't it a darn shame?" This is about doing something, passing legislation, changing policy, trying to address these issues. I will repeat what I said earlier: It is not about lamentation; it is about legislation.

There are three specific things that have come out in this hearing that I want to work on. The first is on asylum seekers, and I do believe that that provision of the PATRIOT Act relative to material support of terrorism needs to be revisited. If we cannot see the distinction between those who are coercing children into this situation and those who are coerced, the children, then the law is clearly not what we want it to be and needs to be addressed. That is No. 1.

Number two is to give prosecution authority within the United States for those who are guilty of crimes involving child soldiers overseas, again, so that no one can view the United States as a safe haven if they have been engaged in this conduct either officially in a governmental capacity or in any other capacity.

And, finally, the bill, which Senator Sam Brownback and I have introduced, this is going to be more challenging because I want to tell you, when you look at the list of the nine or ten countries involved, there are some there that are considered friends of the United States and cooperative with the United States. And we have to be very blunt with them that cooperation will mean that they also forswear the use of child soldiers in their own countries. And if they fail to do so, they will pay a price, that the military assistance will be relegated to efforts to remedy this problem; and if they do not remedy it, then military assistance may be reduced or cutoff.

That is not an easy task in this Congress because there will be many people who argue that so many other good things are happening, we should not push this issue. But those are the three things: asylum, prosecution authority, and military assistance, foreign military assistance to countries involved in using child soldiers.

I do want to do a little bit of housekeeping here before I bring this to an end. I want to note that—if I can find it among my papers here. I want to place in the record written statements from the Center for Defense Information, Amnesty International, and David Scheffer, Northwestern Law School professor and former U.S. Ambassador for War Crimes Issues. Without objection, and

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since there is no one here, there will be no objection—Senator Whitehouse?

Senator WHITEHOUSE. No objection.

[Laughter.]

Chairman DURBIN. Good. We are glad that you are here. We are just about to wrap up the hearing, but I want to give you a chance, Senator, if you would like to make a statement or ask a question.

Senator WHITEHOUSE. No. I am happy to meet the panel at the end.

Chairman DURBIN. Well, thank you for joining us here. Thank you very much.

The hearing record will remain open for a week for additional materials from interested individuals and organizations. Written questions for the witnesses will also be submitted by the close of business 1 week from today. We will ask the witnesses to respond promptly, if they can.

As we close the hearing, I would urge everyone listening to contemplate the question and challenge that Ishmael Beah posed to all of us today. As a father and grandfather, I listened to your words very carefully because you said: would we want our children and grandchildren to endure the pain and suffering that Mr. Beah and other child soldiers face?

As Mr. Beah reminded us, the lives of child soldiers are just as important as those of our own kids and grandkids. We have a moral obligation to take action to help these young people and to stop the abhorrent practice of recruiting and using child soldiers.

Mr. Beah, thank you for being here today. Thank you for this long journey that you have made that brought you to this hearing room and I'm sure that you will continue to be a strong advocate for changing this terrible situation. It is a great honor to have you in the hearing room as well as the other witnesses.

Mr. Roth, thank you for the continued work that you have done.

Ms. Hughes, fighting on the front lines, in the courtrooms and at the hearings for a lot of people, I thank you for that.

Mr. Mettimano, again, my best to World Vision and the many other NGOs that do such fine work.

This hearing is adjourned.

[Whereupon, at 11:22 a.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the record follow.]

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QUESTIONS AND ANSWERS

Questions for the Record from Senator Dick Durbin
Chairman, Subcommittee on Human Rights and the Law
Hearing on "Casualties of War: Child Soldiers and the Law"
April 24, 2007

Questions for Ishmael Beah

1. **You testified that you support prosecuting individuals who recruit or use child soldiers.**

   a. **Why do you think it is important for perpetrators to be prosecuted?**

   Prosecuting perpetrators serves as a deterrent for those who might be thinking of using children in war. If successfully done, it will set a precedent that anyone who recruits children in war will face prosecution. I believe that such a precedent, especially if more prosecutions are carried out, will tremendously help in preventing the use of children in war and also enhance international standards to deal with this appalling phenomenon, as well as raising awareness of the situation globally.

   b. **Do you believe that prosecuting perpetrators could help deter recruiting and use of child soldiers?**

   Absolutely.

2. **As was discussed at the hearing, recruiting and using child soldiers is not a crime under U.S. law, so the U.S. government is unable to prosecute perpetrators who may be found in our country.**

   a. **How does it make you feel that a person who was involved in using child soldiers could find safe haven in the United States without fear of prosecution?**

   It saddens me tremendously to think of this. Without outright criticism and a decision regarding this issue, it makes it seem as though the United States supports the practice of using children in war. This certainly isn't the case, which is why the United States' position should be made clearer on this issue.

   b. **Do you believe that recruiting and using child soldiers should be a crime under U.S. law?**

   It should absolutely be a crime under U.S law as this will further help to prevent the use of children in war and send a message to those who continue to do so that this is unacceptable.

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3. **You spoke about the importance of holding child soldier recruiters accountable. As was discussed at the hearing, under current immigration law, the U.S. government cannot deport or deny admission to an individual guilty of recruiting or using child soldiers on behalf of a government.**

   a. **How does it make you feel that a perpetrator could find safe haven in the United States simply because he or she recruited child soldiers into a national army instead of a rebel force?**

      No distinction should be made between those who recruit children in national armies and those who do so in rebel groups. If officials are pardoned because they recruit children in the name of their nations, we are giving them authority to continue this practice. No one should be pardoned, be he a governmental official or a rebel commander. The recruitment of children is a crime and anyone who commits that crime must be punished. No exceptions should be made.

   b. **Do you believe U.S. law should allow our government to deport or deny admission to a perpetrator regardless of whether they recruited or used child soldiers for a government or a rebel force?**

      It certainly should be the case. This would set a clear example that there is no safe haven anywhere for those who recruit and use children in war.

4. **You testified about the importance of rehabilitating and reintegrating young people back into civilian life. As was discussed at the hearing, provisions of U.S. immigration law brand former child soldiers as terrorists and prevent them from obtaining asylum or refugee status in the U.S.**

   Are you concerned that this could stigmatize former child soldiers and hinder their rehabilitation and reintegration?

   This certainly will hinder the continuing rehabilitation and reintegration of former child soldiers. It is important to educate U.S immigration officials to have a deeper knowledge about this issue so that they are in a position to treat young people who seek asylum or refugee status with dignity and compassion and an understanding of their humanity. If those who arrive here are thrown into jail, as is often the case, then the U.S government isn't helping with the problem but further exacerbating it by sending a message that if you have been victimized as a child, forced into a war, and lost your childhood, that even a country as the United States will not provide you a safe haven.

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RESPONSES OF ANWEN HUGHES TO QUESTIONS SUBMITTED BY SENATORS COBURN AND FEINGOLD

Follow-up questions of Sen. Coburn

1) I am not aware of any cases of people who recruited or used child soldiers in armed conflict being found in the United States, or being denied entry to the United States. Recruiting or using child soldiers is not currently a basis for deportability or inadmissibility as such (although many of those who engage in this conduct would also be inadmissible or deportable on other grounds), so is unlikely to be a focus of immigration enforcement efforts under current law. Currently, the asylum and refugee resettlement systems, as part of the status determination process, ask applicants for refugee protection many questions intended to elicit information relevant to this issue (and information about other facts that might act as bars to asylum), but other immigration-related systems do not.

2) Section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. §§ 1182(a)(3)(B)) should be amended to make it an affirmative defense to exclusion under that subsection that a person acted under duress. That section and the sections of the Act governing asylum (8 U.S.C. § 208(b)(2)(A)(i)), withholding of removal (specifically 8 U.S.C. § 1231(b)(3)(B)(i) and the last sentence at the end of subsection 1231(b)(3)(B)), refugee admissions (8 U.S.C. § 1157), refugee adjustment of status (8 U.S.C. § 1159), and special immigrant juvenile status (8 U.S.C. 1101(a)(27(J)) should also be amended to provide that the persecutor bar and the terrorism-related bars shall not apply to acts or affiliations undertaken while a person was a minor.

3) In a recent report, Human Rights Watch reported concerns expressed by both USAID and by non-governmental organizations working in Nepal about the legal implications of funding assistance to former child soldiers in view of the fact that the Communist Party of Nepal-Maoist (commonly known as "the Maoists") have been listed as a terrorist organization by the U.S. government. See Human Rights Watch, Children in the Ranks: The Maoists' Use of Child Soldiers in Nepal (February 2007).

4) There are a number of existing programs in different parts of the country that provide treatment and counseling to victims of torture and trauma. The Bellevue/NYU Program for Survivors of Torture in New York City is one example, and our organization has worked closely with the Bellevue Program for years. With increased funding, such programs might provide the basis for an infrastructure to provide support to former child soldiers—regardless of their immigration status—as they adjust to life in the United States and seek to recover from their difficult pasts. Another option would be to build on resources available through local child welfare agencies; a difficulty with the latter approach might be that most former child soldiers have past experiences that are different in kind from what those agencies most often see, and also that many former child soldiers are no longer children by the time they would be in a position to avail themselves of those services. It is difficult to know how many former child soldiers there are

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in the United States currently, or how many might be resettled here in the future (assuming resolution of the legal obstacles referred to above), because to the best of our knowledge no one is currently tracking these numbers. But the number is probably low enough that building on existing services would be an efficient means of providing these refugees with the care they need. In order for this to be possible, however, it is critical that former child soldiers—and other traumatized groups—who arrive in the U.S. without permanent immigration status have access to these services while they are going through their immigration processes in this country.

The current immigration detention system poses a significant obstacle to recovery for former child soldiers and other asylum seekers who are detained upon arrival in the U.S. because they lack proper travel documents. While former child soldiers who are still minors at the time of their arrival in the U.S. and who are recognized as such by the Department of Homeland Security (DHS) would fall under the jurisdiction of the Office of Refugee Resettlement within the Department of Health and Human Services, any former child soldiers who have already reached their 18th birthday by the time they arrive in this country, or who are still minors but whose age for detention purposes is contested by DHS, are subject to detention by DHS on arrival, and often remain detained for the duration of their removal proceedings. This is a common problem for asylum seekers generally, and it has terrible effects on victims of trauma. Our organization has long advocated for rule-making on, and enforcement of, DHS's criteria for "parole" (release pending immigration proceedings), in order to ensure that those who meet these release criteria are not detained unnecessarily in jail-like settings for the months or years it can take for their cases to be processed.

Asylum seekers who are not detained face a difficult struggle for survival while they await a final decision on their cases, due to the fact that the immigration laws prohibit them from working until their cases have been pending for 150 days without being denied by an immigration judge, and that they are also ineligible for other social services (including Medicaid, Food Stamps, and housing assistance) until they have a final grant of asylum. While former child soldiers who are still minors and eligible for foster care when they arrive in the U.S. may find housing through that system, those who are legally adults are left to fend for themselves with no right to work and no other means of supporting themselves. Due to their past histories, they may be somewhat less likely than other asylum seekers to be able to rely on family and community networks for assistance. While the numbers of such young people in the U.S. are probably not large, for those who are in this situation, this is a very significant problem. The young man whose case Ishmael Beah referred to in his testimony, for example, turned 18 days before being granted asylum by an Immigration Judge and being released from the jail where he had been detained by DHS since his arrival. Because DHS is appealing the Immigration Judge's grant of asylum, however, this young man remains ineligible for social services he badly needs.

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5) Our organization is able and willing to provide legal assistance to former child soldiers already in the United States who are refugees and need help in making asylum claims. We are able to provide representation to people in New York, New Jersey, and greater Washington, D.C. areas, and regularly provide asylum seekers in other parts of the country with referrals to legal services providers in their areas. The Human Rights First Refugee Protection Program is a legal services organization, and as such we lack the resources or the expertise to provide psychological counseling, shelter, or medical care. There are organizations that provide counseling and medical care, as noted in response to your earlier question, although like many non-profit organizations working in these fields they are engaged in a constant struggle for funding. But shelter is a recurring need for asylum applicants generally, as they are not eligible to work and typically not eligible for government services while their cases are pending. Most of our clients rely on the solidarity of family members or other members of their communities in the U.S., but for those who lack such ties, there is no institutional solution other than local homeless shelters for single adults, which are typically the worst possible environment for former child soldiers. Not all former child soldiers in the U.S. would be asylum applicants, but for any who are, shelter is a major gap in what support networks already exist.

6) This question falls outside the scope of my knowledge and should probably be directed to Human Rights Watch.

Follow-up questions of Sen. Feingold:

1) Former child soldiers who were forcibly conscripted or forced to engage in combat or other acts against their will should not be seen as a threat to U.S. national security by virtue of that fact alone, but should have their situations assessed on a case-by-case basis.

2) It would be relatively straightforward to codify an explicit exception or defense to the persecutor and terrorism bars for those who should not be excluded from protection because of their youth and/or because they acted under duress. Distinguishing between those who willingly persecuted others, or willingly took up arms, and those who acted under coercion or at too young an age to appreciate what they were doing, involves the same kind of fact-finding and assessment of credibility that the Asylum Office and the immigration courts engage in on a daily basis in evaluating asylum and refugee claims. Codifying such a provision in this way (as opposed to making it part of an expanded discretionary waiver under section 212(d)(3)(B) of the INA, 8 U.S.C. § 1182(d)(3)(B)) would ensure that decisions on the applicability of these bars in asylum cases would be adjudicated as part of the evaluation of the case as a whole and would be subject to review. This would provide increased transparency and favor consistent and depoliticized application of these legal standards across time.

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3) We do not have statistics on the number of former child soldiers in the asylum and refugee resettlement systems. We do not believe the absolute numbers are very large. To the best of our knowledge the U.S. government is not tracking this particular ground for exclusion from protection as applied to people who were minors at the time, and we are hesitant to hazard an estimate.

Follow-up Questions of Senator Tom Coburn, M.D.
Hearing on "Casualties of War: Child Soldiers and the Law"
April 24, 2007

Mr. Joseph Mettimano

1. Have the changes in the law brought about through the USA PATRIOT Act and REAL ID caused any problems for World Vision? Specifically, have the new laws raised concern that World Vision could face criminal sanctions for aiding former child soldiers?

No, not at this time. Our position is that the former child soldiers are victims who have finally escaped and we are assisting in their rehabilitation. They are no longer engaged in terrorist activity, and in fact, are probably in danger of retaliation should they ever fall back into the hands of groups like the LRA. This kind of rehabilitative activity is not what the PATRIOT Act was aimed at. Money and support is not flowing to groups such as the LRA through WV, nor are we assisting those still active in terrorist activity.

2. You discussed in your testimony that many former child soldiers are left with deep psychological trauma from their experiences. These children also face stigmatization and other difficulties that make it difficult for them to return to their communities. Therefore, the best future for some of these children may include immigrating to another country.

Assuming that laws are reformed to allow former child soldiers to receive refugee or other immigration status in the United States, please answer the following questions:

(a) Do you recommend that all of these children receive some sort of rehabilitation before they arrive in the United States?

Yes, these children experience a high degree of trauma that must be addressed before (and if) they are relocated to another country and culture. There are many emotional and psychological challenges involved in being moved to another country and immersed in another culture. It would be counterproductive to make this move without a reasonable level of rehabilitation before the process begins.

(b) If a former child soldier arrives in the U.S. (a) with an immigration status, but without receiving rehabilitation because a program was not available, or (b) without rehabilitation or status, how should he be treated when he arrives? In other words, what sort of infrastructure do we need to have in place so that the child is not further traumatized while he is either settled into the U.S. or his immigration case is processed?

Ideally, this would not occur. It is always a good idea for the beginning of rehabilitation to occur among the people, culture and context that the child is familiar with. However, in the case that this can't occur and a child needs to be quickly relocated, they need to be

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treated as child victims of extreme trauma. Many traditional child abuse and exploitation programs in the US may be unequipped or untrained in how to appropriately address the needs of former child soldiers. This infrastructure must be in place to do this work in the best interests of the child.

(c) How could private organizations, such as World Vision, help former child soldiers who are resettled in a new country? Could World Vision or other organizations set up counseling/rehabilitation programs in countries that are willing to receive former child soldiers?

World Vision's work with child soldier rehabilitation is limited to our programs overseas. We do not have the capacity to implement such programs here in the U.S. If we are operating a program in another country where a child may be relocated, it is possible that we can assist in this work.

3. One of your recommendations in your written testimony is that we should "commit U.S. leadership to mobilizing the international community in order to put global pressure on combatants to protect children and to end conflict." How do you recommend that we do that? Specifically, how to we encourage those governments who routinely violate human rights in other ways to (a) care about child soldiers and (b) put pressure on offending States?

1) Passage of S. 1175. 2) Increased engagement on this issue by US embassies, increased discussion at global fora such as the G8 meetings, and high-level leadership for peace discussions such as the Juba peace talks, for example.

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Senate Judiciary Subcommittee on Human Rights and the Law
"Casualties of War: Child Soldiers and the Law"
April 24, 2007

Responses to Subcommittee Members' written questions from Kenneth Roth, Executive Director, Human Rights Watch

I. Responses to questions from Senator Dick Durbin:

1) You testified that national courts have "barely played a role" in prosecuting individuals who have recruited or used child soldiers.

a) Why have national courts played such a limited role?
b) Why would it be helpful for national courts to play a greater role in prosecuting perpetrators?

The limited role of national courts is rooted in several factors. First, in war-affected countries, national judicial systems are often weak, meaning that courts have limited capacity to prosecute perpetrators for crimes, including the recruitment of child soldiers. Second, although the majority of the world's states are party to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, few have implemented the protocol's provision calling on states to criminalize the recruitment or use of child soldiers in their domestic legislation. Third, many states lack the political will to prosecute members of their own armed forces for violating recruitment laws.

A stronger role by national courts in prosecuting child recruiters would help ensure that justice is done for the crime of recruiting and using child soldiers and maximize the potential for deterrence. Although international courts, such as the Special Court for Sierra Leone and the International Criminal Court (ICC), are currently prosecuting

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cases against individuals for child recruitment, their scope and capacity are limited. Prosecutions by national courts would send a strong message to individual commanders that impunity for child recruitment will not be tolerated, and impress upon them the credible risk of prosecution.

2. What are the limits of international courts in bringing to justice individuals who have recruited or used child soldiers?

International courts are exceptional bodies that can try only a limited number of individuals—far fewer than the number of perpetrators. Existing international tribunals are limited in geographic scope—either to a specific conflict (e.g., the Special Court for Sierra Leone) or, in the case of the International Criminal Court, to states that have ratified the Rome Statute, states that have voluntarily accepted the court's jurisdiction, or situations that have been referred by the UN Security Council. Some international courts also have limitations on their temporal jurisdiction and the individuals they can prosecute. For example, the Special Court for Sierra Leone has authority to prosecute only those "bearing the greatest responsibility" for serious crimes committed during the Sierra Leone conflict and only since 1996.

An additional challenge is the apprehension of individuals for whom arrest warrants have been issued to ensure their appearance for trial. For example, the International Criminal Court has issued arrest warrants against five of the top leaders of the Lord's Resistance Army (LRA), which is responsible for the abductions of tens of thousands of children in Uganda. However, the ICC does not have a police or military force empowered to arrest these leaders, leaving it dependent on the capacity and willingness of governments and intergovernmental organizations to execute the warrants. The LRA leaders currently remain at large and are believed to be in the Democratic Republic of the Congo.

3. What kind of signal would it send to the rest of the world if the United States were to enact legislation criminalizing recruitment and use of child soldiers?

The enactment of such legislation would send a strong signal that the United States will not tolerate impunity for child recruiters and is prepared to prosecute individuals

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who commit such crimes in the United States, or attempt to take safe haven in the United States. It will also provide a positive model to other states. As more and more states enact such legislation, the number of countries where child recruiters might feasibly take refuge would become progressively smaller, in itself a form of deterrence.

II. Questions from Senator Tom Coburn:

1. **Do you know whether any persons who recruited or used child soldiers in armed conflict have ever been found in the United States? If so, what was their immigration status? Did the US extradite, expel, or prosecute them?**

The number of such individuals who have entered the United States is unknown. Human Rights Watch has not researched this issue, and is not aware of investigations on this issue by any other governmental or non-governmental entity. However, we know that the son of former Liberian president Charles Tayler, Charles McArthur Emmanuel, also known as Charles "Chuckie" Taylor, Jr., has been detained by the US government since he entered the United States on March 30, 2006. Taylor Jr. – who is a US citizen – headed the Liberian Anti-Terrorist Unit, a branch of the Liberian government security forces. According to Human Rights Watch research, this unit was involved in numerous abuses, including abducting and forcibly recruiting children during Liberia's internal armed conflict. After entering the United States, Taylor Jr. was initially charged by the US government for submitting false statements in a US passport application. In December 2006, he was indicted by the US government for torture committed in Liberia under the US anti-torture statute (18 USC 2340A). This is the first case ever to be brought in federal court on such a charge. Taylor, Jr. is currently awaiting trial on this charge, which has been set for September 2007.

2. Please describe your suggestions for amending existing law to provide exceptions or affirmative defenses for individuals who are unjustly unable to obtain immigration status in the US because of changes made to the law in the USA PATRIOT Act and REAL ID.

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Child soldiers forcibly conscripted into armed rebel groups continue to be defined as "terrorists" under current immigration law and denied admission to the United States, even if they have undergone thorough rehabilitation thanks to US assistance. The absurdities do not stop there: Hmong and Montagnards from Southeast Asia are being defined as terrorists and barred entry into the United States *because* they fought as part of a nongovernmental force alongside US forces during the Vietnam War. Rape victims forced into domestic servitude are being labeled supporters of terrorism *because* of the cooking and cleaning they were forced to do while enslaved.

Any legislative fix should address each one of these unintended consequences of the law. It should include, as a minimum, (i) an exception for former child soldiers who have left their armed group; (ii) a duress exception to protect victims of terrorism from being defined as "material supporters" of terrorism; (iii) a redefinition of "terrorist activity" so that individuals and groups who engage in acts of resistance that do not target civilians are no longer defined as terrorists; and (iv) expanded waiver authority – something that the administration has requested and needs – to avoid the unintended consequences of these laws on a case-by-case basis.

3. Are you aware of any non-governmental organizations who have stopped assisting former child soldiers out of fear of being prosecuted under current US law?

No. However, we have been in contact with non-governmental organizations in Nepal and elsewhere that have expressed concern that US laws prohibiting material assistance to terrorist organizations may prevent USAID from supporting programs for the rehabilitation and reintegration of former child soldiers from armed groups (for example, the Maoists in Nepal, who have an estimated 6,000-9,000 children in their ranks).

4. If a former child soldier arrives in the US (a) with an immigration status, but without receiving rehabilitation because a program was not available, or (b) without rehabilitation or status, how should he be treated when he arrives? In other words, what sort of infrastructure do we need to have in place so that the child is not further traumatized while he is either settled into the US or his immigration case is

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processed?

At least three elements are critical. First, the child should not be detained while his or her case is being processed. In past cases, former child soldiers have been held in juvenile detention facilities for lengthy periods while their claims have been processed. Such detention only exacerbates any emotional or psychological problems the child may already be experiencing. Alternatives should be sought, including placement with foster families or in supervised shelter care facilities. Second, the child should be assigned a social worker to help assess his or her needs, and the kinds of services that would be desirable. This evaluation should take place regardless of whether the former child soldier was able to access rehabilitation services in his or her home country, because rehabilitation should be seen as a long-term, ongoing process. Third, former child soldiers should have access to legal counsel, to help them prepare their claims for asylum or other status.

5. Would your organization be able and willing to provide support for former child soldiers who relocate to the United States, such as shelter, counseling, and medical care?

Human Rights Watch is a research and advocacy organization, and does not provide direct services such as those described.

6. Even assuming we pass the Child Soldier Prevention Act of 2007 (S. 1175) and thereby make our foreign military assistance contingent on countries not using child soldiers, how do we reach out to other countries and encourage them to do the same, particularly other human rights violators?

Human Rights Watch is already exploring the possibilities of similar legislation being introduced in other countries. We have met with a Canadian senator who is interested in introducing legislation to limit Canadian military assistance to governments involved in the recruitment and use of child soldiers. We also work with the international Coalition to Stop the Use of Child Soldiers, which conducts outreach to members of the European Union, who we believe may also be willing to pursue such legislation. Apart from advocacy efforts by non-governmental

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organizations, the US State Department should encourage other states, including human rights violators, to take similar legislative and other action to address the recruitment and use of child soldiers, in both its bilateral meetings, and in international forums related to children and armed conflict.

III. Question from Senator Russell Feingold:

1. **After the Sierra Leonean civil war, the United Nations and the government of Sierra Leone established the Special Court for Sierra Leone to prosecute individuals for war crimes and crimes against humanity. What has the Special Court accomplished regarding child soldiers and what are the implications of their upcoming verdicts?**

Each of the nine defendants being tried by the Special Court for Sierra Leone, including former Liberian president Charles Taylor, has been charged with the crime of recruiting and using children as soldiers. Judgments in two of the trials, in which five of the defendants are being tried, are expected soon. If they are convicted of recruiting and using child soldiers, this will be a significant precedent, as these will be the first-ever convictions of individuals in an international tribunal for the crime of recruiting and using child soldiers. Such decisions will help to combat the culture of impunity for this crime, which has been the norm in too many states.

Another significant accomplishment by the Special Court for Sierra Leone was the Appeals Chamber's May 2004 ruling that the prohibition on recruiting children below age 15 had crystallized as customary international law prior to 1996, and furthermore, that the relevant individuals bore individual criminal responsibility for their acts. This decision marks an important development in the evolving jurisprudence on the issue of child soldiers by further solidifying the principle of individual criminal responsibility.

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SUBMISSIONS FOR THE RECORD

Senate Committee on the Judiciary
Subcommittee on Human Rights and the Law

"Casualties of War: Child Soldiers and the Law"

Statement for the Record by Amnesty International USA
April 24, 2007

Introduction

Amnesty International would like to commend the Senate Committee on the Judiciary for establishing the new Subcommittee on Human Rights and the Law. This subcommittee is conducting vital work by looking into serious human rights violations in the United States and around the world within the context of U.S. and international law.

Amnesty International commends Chairman Durbin and Ranking Member Coburn and all the Senators on this committee for their human rights work and in particular for taking on the critical issue of child soldiers. Last week, we also applauded the leadership of Senators Durbin and Brownback as they introduced the Child Soldier Prevention Act of 2007, an important step forward in the fight to end the recruitment and use of child soldiers.

This statement provides a brief background on the issue of child soldiers and the scope of the problem; discusses the challenges to holding perpetrators accountable for the recruitment and use of child soldiers through criminal prosecution; underscores the obligation to support disarmament, demobilization, and reintegration (DDR) programs targeted at child soldiers; and highlights the obstacles in U.S. law for forcibly-recruited child soldiers to seek asylum or refugee protection in the United States.

Background

Around the world, boys and girls are singled out for recruitment both by armed forces and armed groups. Many are forced to join by intimidation, including threats against their families, or abduction. Others volunteer, sometimes because they want to fight, sometimes because their families are destitute, and sometimes because they themselves are homeless and seeking food, shelter, and security.

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Easily manipulated, children are sometimes coerced to commit grave atrocities, including rape and murder of civilians. Often children wield small arms and light weapons. Some children are forced to injure or kill members of their own families or other child soldiers. Others are porters, cooks, guards, messengers, spies, and sex slaves. Casualty rates among children are generally high, because of their inexperience, fearlessness, and lack of training, and because they are often used for particularly hazardous assignments.

Approximately 250,000 children under the age of 18 are thought to be fighting in conflicts around the world, and hundreds of thousands more are members of armed forces who could be sent into combat at any time. Although most child soldiers are between 15 and 18 years old, significant recruitment starts at the age of 10 and the use of even younger children has been recorded.

Amnesty International has drawn attention to human rights abuses in the context of child recruitment both by governments and armed opposition groups in countries such as Angola, Burundi, Colombia, Democratic Republic of Congo (DRC), Rwanda, Sierra Leone, Sri Lanka, and Uganda. We are also one of the founding members of the International Coalition to Stop the Use of Child Soldiers.

Perpetrators and Justice

Amnesty International calls for all perpetrators of crimes involving serious violations of human rights – including crimes such as genocide, war crimes, and crimes against humanity – to be brought to justice. This includes those responsible for recruiting and using child soldiers. To do otherwise fuels and reinforces a climate of impunity, that is, those responsible for such crimes will feel encouraged to keep doing what they are doing, and those who might be considering such crimes will proceed with the confidence of knowing that they will not be held accountable.

Pursuing justice is extremely important not only as a deterrent to future crimes, but also because it is the right of victims. Children and communities who have been impacted by these crimes have a right to see those responsible brought to justice. They have a right to have the truth about what was done to them made public. They have a right to reparation, which includes rehabilitation.

As Liberia's recent history suggests, the failure to address violations of international human rights and humanitarian law in the past helped perpetuate civil conflict and exacerbate the use of child soldiers. During Liberia's civil war from 1989 to 1996, all parties to the conflict committed grave human rights violations, including the enlistment of child soldiers under the age of 15 and their use in hostilities. Yet, after the parties signed the 1996 peace accords, not one of the perpetrators was prosecuted for their crimes, nor was there a real threat of prosecution. When the conflict resumed three years later, the recruitment and use of child soldiers and other human rights violations were committed on an even greater scale.

In the last ten years, international standards have reaffirmed that the use of children in armed conflict is a crime of international concern. Most notably, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict prohibits

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absolutely any forced recruitment of children under 18 into the armed forces (Article 2), among other restrictions. Over 110 governments have ratified the Optional Protocol, including the United States in December 2002.

The Special Court for Sierra Leone, which was established in 2002 to try those responsible for crimes committed during the country's violent conflict, is empowered to prosecute persons responsible for the abduction and forced recruitment of children under the age of 15 into armed forces or groups.

The Rome Statute of the International Criminal Court (ICC), which was adopted in 1998, makes conscripting or enlisting children under the age of 15 (whether this is forced or voluntary) into armed forces or groups or using them to participate actively in hostilities a war crime. "Participation" extends to using children for sabotage, or as scouts, spies, decoys and couriers.

These internationally recognized standards and mechanisms have paved the way for landmark prosecutions of those responsible for using children in hostilities. The Special Court for Sierra Leone included in its indictment against Charles Taylor, the former President of Liberia, the charge of using child soldiers. The Special Court has also indicted eight other individuals on similar charges.

In March 2006, Thomas Lubanga Dyilo, the leader of an Ituri armed group operating in the Democratic Republic of Congo (DRC), was arrested in Kinshasa and transferred to the International Criminal Court (ICC) in The Hague. Lubanga has been charged by the ICC with committing war crimes that include "enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities." Lubanga's case will be the first trial before the ICC, and the first time that an individual has been brought before an international court solely on the basis of these crimes.. In August of last year, the ICC's Chief Prosecutor, Luis Moreno-Ocampo said of this case,

> *Regardless of the outcome of the proceedings, this case represents a huge step in the struggle against these serious crimes against children. Child conscription destroys the lives and futures of thousands of children around the world. This case will contribute to exposing the problem and in stopping these criminal practices.*

While national governments have largely failed to prosecute those responsible for using children in armed forces, one notable case exists in the DRC. The FARDC Major Jean-Pierre Biyoyo, a former commander of the Mudundu-40 armed group, was eventually sentenced to five years in prison in March 2006 for the illegal arrest and detention of children who had already left the armed forces and were re-recruited by the defendant in April 2004. The prosecution was based on Article 67 of the Congolese Penal Code, which makes it an offence to abduct, arbitrarily arrest, and illegally detain individuals. This charge was used because, although recruitment of under-18 is illegal in DRC, it is not a specific criminal offence in the existing penal codes.

It is important also to recognize that in many countries a broad range of actors believe steps should be taken to redress past violations. In May through June 2006, for example, Amnesty International researchers met a wide range of actors in Liberia: suspected perpetrators, such as

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ex-commanders of armed opposition groups, and those loyal to former President Charles Taylor's government; victims of rape and sexual violence; children under 15 conscripted or enlisted into fighting forces; survivors of massacres; torture victims; internally displaced persons and members of civil society. They all revealed their expectations that the Government should take steps to redress past violations. While many thought the Truth and Reconciliation Commission (TRC) was an important beginning point largely they expressed the importance of prosecuting the suspected perpetrators of war crimes and crimes against humanity.

U.S. support for international and national efforts to prosecute individuals responsible for using children in armed forces is absolutely crucial. It is often said that where the U.S. leads, the rest of the world follows. Today, U.S. leadership is needed in giving teeth to the indictments and warrants issued by judicial bodies such the ICC and the Special Court for Sierra Leone. Without a strong signal from the international community that the prohibition on such crimes will actually be enforced, neither the law, nor the fine judicial institutions that have been established to implement it have a hope of having an impact.

This can and should be done in several ways: by encouraging the governments in whose territories suspects are operating to make arrests, or failing that, to cooperate with efforts by other entities to make arrests; by using the United States' influential role in the U.N. Security Council to ensure that U.N. missions are specifically empowered – and given the resources – to assist in investigation and arrests of suspects; and by publicly reiterating the importance of supporting the important work of courts attempting to hold perpetrators accountable.

In addition, the United States can and should be sharing evidence and providing technical and financial assistance to courts that investigate these crimes. The United States can publicly and privately urge other governments to adopt legislation that will enable the prosecution of child soldier users. And the U.S. should continue to support the rebuilding of national justice systems in post-conflict settings. In the DRC, the United States must push the DRC government to make the recruitment or use of child soldiers a specific offence under the DRC's civil and military penal codes. In Liberia, U.S. support for civil society projects that are monitoring the TRC are important.

Obligations for Disarmament, Demobilization, and Reintegration (DDR) Programs

To help protect former child soldiers, usually once a cease-fire has been initiated, Amnesty International has joined members of the international community in calling for effective disarmament, demobilization, and reintegration (DDR) programs targeted at child soldiers. These programs are designed to remove children from armed groups or armed forces and return them safely to their families or communities. Before and sometimes once children are reunited with their family or community, they are often provided with rehabilitation services, including health care and education or vocational training.

These programs are a paramount concern of international law. According to Article 6(3) of the Optional Protocol to the Convention on the Rights of the Child requires that "*States parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States*

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parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and social reintegration."

In April 2006, the UN Security Council also passed resolution 1674, which "underscored" the importance of DDR of ex-combatants in the protection of civilians affected by armed conflict. It also mentioned the importance of ensuring that adequate resources are available for the full completion of DDR programs and activities.

Despite strong international support for these programs and some successes, both for adults and children, the programs targeted at child soldiers often face significant challenges to successfully demobilizing and rehabilitating children. The reintegration of child soldiers is perhaps the most challenging as funding for such program usually dries up after a couple of years. Effective reintegration, however, often takes longer. The current DDR program in the DRC presents an example that is similar in many ways to problems other DDR programs have encountered in other countries.

As part of a national peace process and a political transition that began in June 2003, the DRC government, backed by $200 million of international finance, launched a country-wide DDR program to return an estimated 150,000 government troops and armed group fighters, including an estimated 30,000 children, to civilian life. However, the implementation of the program was badly delayed by a lack of political and military will to engage in the process, as well as serious management and technical problems. Ongoing insecurity in eastern DRC has also disrupted and at times threatened to undermine the programs.

By the end of June 2006, the DRC government commission coordinating the DDR program in DRC, the *Commission nationale de désarmement, démobilisation et réinsertion* (CONADER), reported that it had demobilized 19,054 children from the armed forces and groups. At around the same time, CONADER also announced that budget constraints were forcing it to suspend most of its demobilization activities in order to concentrate the remaining funds ($50 million) on reintegration.

More than two years after the official launch of the national DDR plan in July 2004, however, perhaps at least 11,000 children are still with the armed forces or groups, or are otherwise unaccounted for in the DDR program. In particular, large numbers of girls are missing: in some areas, less than two percent of the children passing through the DDR program have been girls. Amnesty International believes on the basis of its research that the majority of girls have been abandoned or misidentified as "dependants" of adult fighters.

In areas of eastern DRC where insecurity persists, children that have only recently been demobilized and who are especially vulnerable to re-recruitment continue to be re-recruited. Some are re-recruited by force; others are effectively pushed back into the armed groups because the DRC government has not provided them with meaningful support once returned to their communities.

To date, little government effort and resources have been put into the reintegration of released children. Amnesty International believes that the majority of children released and reunited with

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their communities are so far unsupported or poorly supported in their return to civilian life and are not being provided with adequate educational or vocational opportunities.

To address some of the problems with the DRC DDR program, the United States must work to help increase financial assistance for effective demobilization and reintegration programs, either for CONADER or NGOs in DRC, with these priority goals: 1) ensure that CONADER is fully capable of fulfilling its management and technical role of the child DDR process effectively, with transparency and accountability; 2) help identify and recover the large number of number of children, including the many girls, who are currently not accounted for and are not taking part of the DDR program; 3) in accordance with the UN Guiding Principles on Internal Displacement, ensure that the return of children to their communities is voluntary and safe (There should be no return of children to areas where they are at risk of re-recruitment.); and, 4) develop and implement a detailed plan of action to ensure within a reasonable number of years the availability and accessibility of education or vocational training for former child soldiers. Many of these recommendations aimed to improve the DRC DDR program could guide the United States generally as it works to assist former child soldiers.

U.S. Immigration Law and "Persecutors of Others"

Amnesty International advocates that former child soldiers be considered for refugee resettlement abroad and asylum protection in the United States when they cannot return to a safe civilian life in their home countries. Yet, many former children may be barred from protection due to the acts they were forced to engage in as child soldiers.

For example, former child combatants may be denied refugee and asylum protection in the United States because they are deemed "persecutors of others" based on the actions they carried out as child soldiers. A person who "ordered, incited, assisted, or otherwise participated in the persecution" of any person on account of his race, religion, nationality, membership in a particular social group, or political opinion may not be granted refugee or asylum status. U.S.C. § 1158(b)(2)(A)(i), 8 U.S.C. § 1101(a)(42). Having been a child forced to fight on behalf of a government army or a militia does not exempt a minor from being barred entry into the United States as a persecutor. As a result, boys and girls abducted by the Lord's Resistance Army (LRA) and forced to fight the Ugandan army may be ineligible for refugee protection because some of the actions they undertook as child soldiers are considered persecutory in nature.

In addition, because applications for refugee and asylum protection can take years to be considered, a former child soldier's request for protection may be unfairly analyzed under adult standards because he is an adult at the time of adjudication. Many Mayan Guatemalan children kidnapped into the military during the civil war are facing this scenario. Although they applied for asylum protection in the early 1990s based on the persecution they suffered as Mayan child soldiers, only now are their applications being considered. Because many of these former child soldiers are now adults, their military service may be deemed a bar to protection rather than a piece of the persecution they suffered as child soldiers.

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It is Amnesty International's view that U.S. law was not intended to bar otherwise eligible children from refugee and asylum protection specifically because they were abducted by armed forces and armed groups and forced to engage in combat. Legislation to fix this anomaly is critically needed. Amnesty International recommends amending U.S. immigration law to exclude forcibly recruited child soldiers from the category of people barred from refugee protection as "persecutors of others."

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Testimony of Ishmael Beah
Author, "A Long Way Gone: Memoirs of a Boy Soldier"
before the
Senate Judiciary Subcommittee on Human Rights and the Law

Hearing on "Casualties of War: Child Soldiers and the Law"
April 24, 2007

Good morning, Mr. Chairman, Ranking Member Coburn, and Members of the Subcommittee.

My name is Ishmael Beah. I am here today to tell you about my experiences as one of the thousands of children who was forced to fight as a child soldier in the Sierra Leone civil war. It isn't easy for me to recount these experiences so I hope that you can give me your undivided attention. As I speak to you, there are thousands of children from ages 8 to 17 in Burma, Sri Lanka, Congo, Uganda, Ivory Coast, Colombia, just to name a few places, that are being forced to fight and lose their childhoods and their families. They are maimed and they lose their humanity, and these are the fortunate ones. Those who are less fortunate are killed in the senseless wars of adults. I want you to think of them and to simultaneously think about your children between those ages and whether you would want them to be subjected to the kinds of suffering, pain and victimization that I and others underwent; that I am about to describe to you.

I was eleven years old when the war began in Sierra Leone. Prior to that I had a normal life; I went to school, played soccer, went swimming and did my homework. But after the war started, I remember seeing a tide of people carrying their belongings and their malnourished children walking through the

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streets of my town every evening. They were clearly on a path to somewhere else. At the time I couldn't comprehend what made those families walk hundreds of miles from their homes, and why they were still terrified and preferred sleeping in the bushes instead of spending the night in my town. War simply wasn't my reality at that time.

A year later, following the attack on my town and having been separated from family, my older brother, a friend and myself were in Mattru Jong, a neighboring town near my home where we had been waiting for news of members of our families, when we first heard a single gunshot. A few minutes later, we heard many more gunshots coming from all around us. Instinctively we began running. The gunshots made it difficult for us to think and there was chaos in town as people ran, screaming and trampling whoever was in their way.

As we ran from the sound of the gunshots we saw children who were alone, shirtless, following the crowd, screaming and crying for their parents. We saw mothers wailing for their lost children with so much pain in their voices that I felt my veins tighten and my skin twitch. But all of their cries were in vain. To stop and help someone was asking for death as the rebels were firing at civilians to stop us from leaving town. Each time the gunshots intensified, my body trembled. A woman running ahead of me was clearly unaware of the trail of blood that followed her – the child she carried on her back had been shot and killed. There were bullets coming from every direction and people were struck down in front of me as I ran for my life.

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I was 12 years old and was on the run for several months after the war reached me. I saw dead bodies strewn by the sides of roads, witnessed killings, and passed through abandoned villages where the air smelled of blood, and where vultures and dogs feasted on dead bodies. I had been separated from my older brother during an attack and was now with a group of friends from school.

The news that my family was in the village where I was headed was the only thing that kept me alive during that period. Knowing they were alive and well gave me the strength to continue running, even at times when I would go for a week without eating anything. But when I finally made it to the outskirts of that village, I found that the rebels had arrived before me. They attacked and burned the village to the ground. They murdered all of my family and everyone who was there.

Some of the people were shot in the head; others tied and burned alive. Some women and children were locked in houses that were set on fire.
Later, after the rebels had left, I began walking in the ruins of the village. But I only went a few paces before my knees gave up under me and I fell to the ground. I was in too much pain and shock to cry; I felt myself beginning to harden. I had lost the strength to carry on. I felt that there was no reason to stay alive anymore.

Not long afterwards, I found myself in a village occupied by the Sierra Leonean Army. At first, my friends and I helped in the kitchen to cook for the soldiers. They gave us food, a place to sleep, some basic necessities and a feeling of

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security. But after a while, the soldiers announced that they wanted to recruit more able bodies as they had lost many men to the rebels who constantly tried to attack the village we were staying in. We were told that our responsibilities as boys were to fight in this war or we would be killed. I was thirteen years old. Neither my friends nor I had any choice --- it was either join or be killed. We had no family and no other means of survival. We were forcibly recruited and taught how to use the AK 47, M16s, Machine Guns, G3's, Rocket Propelled Grenades (RPGs), etc., for less than a week and then we were sent into battle. Many of my friends were shot dead in front of me as many of us didn't know how to use the guns very well and were paralyzed by fear.

I will never forget my first day in battle. We were led into the forest by the adult soldiers to ambush the rebels. My squad had boys who were as young as seven, who were dragging guns that were taller than them as we walked to the frontlines. We formed an ambush by a swamp and waited for the rebels. Upon their arrival, the lieutenant ordered us to open fire. I couldn't shoot my gun at first. But as I lay there watching my friends getting killed, the seven-year-old boys crying for their mothers as life departed their little bodies, and the blood from my friends who had died covering my hands and face, I began shooting. Something inside me shifted and I lost compassion for anyone. After that day, killing became as easy as drinking water. I had lost all sense of remorse.

Our commanders gave us drugs – marijuana, cocaine, and Brown Brown: a concoction of cocaine and gunpowder -- before battles to anaesthetize us to

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what we had to do. They showed us war movies like "Rambo – First Blood" to fuel our thirst for war and our sense of invincibility. There was also tremendous coercion wherein if the child didn't carry out orders from the commander, that child was killed. The tools used to force us to commit atrocities were the guns. There were too many of them and they came from all parts of the world. There were M16s, which are guns primarily made in the U.S; G3's, German weapons; and AK47's, just to name a few.

For over two years, all I did was take drugs, fight and kill or be killed. At the time it felt as though there was no way to stop. I never imagined that I would be able to leave that life behind, as I had been cut off from all other realities except for that of the war.

But I did get out of that madness with the help of Children Associated with War, which was sponsored by UNICEF and other non-governmental organizations. I wouldn't be alive today if it weren't for the presence of non-governmental organizations that believed that children like myself, due to our emotional and psychological immaturity, had been brainwashed and forced to be killers, and above all, that we could be rehabilitated and reintegrated into society. Healing from the war was a long-term process that was difficult but very possible. It required perseverance, patience, sensitivity and a selfless compassion and commitment from the staff members at my healing center. Effective rehabilitation of children is in itself a preventive measure and this should be the

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focus, not punitive measures against children that have no beneficial outcome for the child and society.

I and many others are living proof that it is possible for children who have undergone and experienced such horrors to regain their lives and become ambassadors of peace. My experience and those of other survivors exemplifies the resilience of children and the capability of the human spirit to outlive life's worst circumstances, if given a chance, the right care and support.

In the United States, many people criticize the United Nations, its affiliates and generally NGOs. For some of us these are the only organizations that are willing to speak for our plights, to raise awareness about our sufferings and to help us recover when no one comes to our aid. Their work must be strengthened rather than chastised.

In addition it is important and life saving not only to have international legal standards that ban the use of children in war but they must be strengthened and supported by nations affected and those not affected by these appalling tragedies. With the presence and enforcement of these legal standards, United Nations and NGO workers will have the courage and conviction to confront commanders who use children in war and ask them to release these young fighters. If such legal standards hadn't been in place, I wouldn't be here. I would be dead. But the problem continues, which is why I urge you to join in prevention efforts by supporting the prosecution of those who recruit children; strengthening international laws to ban the use and sale of small arms, a good

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number coming from the United States, that end up in the hands of children; and finally condemning and curtailing all support to nations that recruit children or allow such practices to occur on their territory.

One thing that history has taught us is that when we ignore such problems as the use of children in war, they become bigger and more complex problems that later affect us and that we then might be unable to solve. If you do not help these children now, they will grow into adults who will become the leaders of their nations who will have no understanding of ethical and moral standards, and ladies and gentlemen, whether you like it or not, your children now, the future leaders of this country, will have to face them and deal with them.

When you go home tonight to your children, your cousins, and your grandchildren and watch them carrying out their various childhood activities, I want you to remember that at that same moment, there are countless children elsewhere who are being killed; injured; exposed to extreme violence; and forced to serve in armed groups, including girls who are raped (leading some to have babies of commanders); all of them between the ages of 8 and 17. As you watch your loved ones, those children you adore most, ask yourselves whether you would want these kinds of suffering for them. If you don't, then you must stop this from happening to other children around the world whose lives and humanity are as important and of the same value as all children everywhere. I thank you for your time and sincerely hope that I have not revisited those difficult memories of mine in vain.

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Statement by Senator Sam Brownback
"Casualties of War: Child Soldiers and the Law"
April 24, 2007

Mr. Chairman, thank you for calling this hearing on the issue of child soldiers. This week, the Child Soldiers Prevention Act was introduced to end the use of child soldiers around the world by encouraging governments to disarm, demobilize, and rehabilitate child soldiers from government forces and government-supported paramilitaries.

Under international law, the recruitment and use of children under the age of 18 is prohibited. However, an estimated 250,000 children are exploited each day in state-run armies, paramilitaries and guerilla groups in over 20 countries around the world, of which the following eight receive U.S. military funding: Burundi, Colombia, Democratic Republic of the Congo, Cote d'Ivoire, Paraguay, Somalia, Sudan, and Uganda. The health and lives of these vulnerable children, some as young as 8 years old, are subjected to extreme brutality as they are abducted, manipulated and forced to commit some of the most atrocious acts of violence.

Children are particularly vulnerable to recruitment if they have been separated from their families, displaced from their homes, and have limited access to education. Many of these boys and girls are manipulated into becoming child soldiers, because they believe it is the only way out of the intense poverty they face. Once recruited, child soldiers serve as combatants, porters, human mine detectors, and sex slaves.

The Child Soldiers Prevention Act would curtail U.S. military assistance to governments that fail to take concrete steps to end and involvement in the recruitment or use of child soldiers. Countries that take part in ending this practice and demobilize children from their forces would be eligible for assistance of their forces for up to two years before any prohibition would be imposed.

The depressing facts about the plight of children used as soldiers and sex slaves underscore the need for more hearings like this one, and again I commend Chairman Durbin for convening this hearing. The U.S. and the international community should use its global stop the atrocities against children who have suffered the cruel and awful fate of being forced to kill others or be killed themselves.

I proudly join Chairman Durbin and others in standing up for the human dignity of suffering children trapped in unconscionable circumstances who are unable to stand up for themselves. I truly believe that America is great because America is good. One way that we can ensure our country's greatness for generations to come is standing up for children who are exploited around the world.

Thank you, Mr. Chairman.

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Written Testimony Submitted by Rachel Stohl, Senior Analyst, Center for Defense Information to the Senate Judiciary Committee Subcommittee on Human Rights and the Law hearing "Casualties of War: Child Soldiers and the Law"
April 24, 2007

I want to thank Senator Durbin for convening this important hearing today and for the opportunity to submit a statement for the record.

This hearing addresses the tragic issue of child soldiers, an issue which has received increased public and political attention in the last 15 years. Several steps have been taken to eliminate this devastating practice, but despite the legal protections currently in place, children continue to be forcibly conscripted into both non-state and government armed forces.

The United States has the opportunity to take an additional and crucial next step in preventing the use of child soldiers – by restricting U.S. weapons, military training, and financing to governments or government-supported armed groups that continue to use child soldiers. Without such a policy, the United States has consistently supplied governments using child soldiers with military assistance and plans to provide additional assistance to eight of these countries in Fiscal Year 2008.

The United States wields great diplomatic and military power across the globe and often holds up its laws, policies, and practices as models for the rest of the world. With regards to child soldiers, the United States has taken great strides to ensure that children at home and abroad do not participate in armed conflict. The United States has already demonstrated its commitment to stopping the use of child soldiers by ratifying and implementing the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children and Armed Conflict.

I applaud the United States for its efforts to ensure that children around the world are not subjected to the life-threatening risks of fighting in conflicts and serving in government militaries. Yet, the United States still has a responsibility to prevent its weapons from being used by or against boys and girls forced to fight.

The United States is the world's largest arms exporter and has dominated the post-Cold War arms trade. According to the Congressional Research Service, the United States was single-handedly responsible for 29 percent ($12.8 billion) of all arms transfer agreements and 46 percent ($11.6 billion) of all arms deliveries in 2005 alone.

The United States holds great influence with the governments around the world that are eager to purchase U.S. weapons and receive highly-valued U.S. military training. The United States has long used military assistance as a reward for allegiance to and support for its foreign policy

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objectives and principles and has likewise restricted military assistance when countries have acted against U.S. interests. Using U.S. military assistance as an incentive for support of U.S. policies and interests is consistent with past U.S. practice. The United States cut off military assistance to Indonesia in the late 1990s in response to severe human rights abuses perpetrated by government forces. Similarly, the United States is currently providing U.S. military assistance at ever-increasing levels to countries that support the United States in its war on terror.

Receiving U.S. weapons is a privilege, not a right, and the United States has every right to ensure that those weapons are used in ways consistent with U.S. policy goals and practices. Letters of Agreement and Memoranda of Understanding often contain conditions specifying a weapon's purpose, use, or end-user. It is a long-standing tenet of U.S. law, under the Foreign Assistance Act, that U.S. arms may not be transferred to gross and consistent human rights abusers. No one can dispute that the use of child soldiers is one of the most horrific violations of human rights, and countries continuing this practice should not be rewarded with U.S. military assistance.

Each year, the U.S. Department of State's Country Reports on Human Rights Practices exposes the "nature and extent of the compulsory recruitment and conscription of individuals under the age of 18" by all armed groups in every country, and describes the steps that have been taken by the governments of each country to eliminate such practices.

The 2006 Country Reports on Human Rights Practices contain information concerning nine countries where children were recruited or used as soldiers by government security forces or government-sponsored armed groups.[1] Of these 9 countries, the U.S. government has supplied eight with military assistance since 2001, including Foreign Military Sales (FMS), Direct Commercial Sales (DCS), Excess Defense Articles (EDA), International Military Education and Training (IMET), Foreign Military Financing (FMF), or a combination of all five categories.[2] The provision of these defense articles and services has continued, despite the fact that the U.S. Department of State has provided ample evidence of child soldiers used by government forces or government-supported armed groups in these countries. Current U.S. law is insufficient to ensure that U.S. weapons are not used by or against child soldiers. Additional legislation is required to close this troubling loophole.

I personally believe that the Child Soldiers Prevention Act of 2007 (S. 1175) is an important first step in U.S. diplomatic and military efforts to stop the use of child soldiers worldwide. I look forward to the United States setting a precedent that will encourage other countries to pass similar legislation that will protect children from armed conflict.

[1] Burma, Burundi, Chad, Colombia, Congo (Democratic Republic of), Cote d'Ivoire, Sri Lanka, Sudan, Uganda
[2] Burundi, Chad, Colombia, Congo (Democratic Republic of), Cote d'Ivoire, Sri Lanka, Sudan, Uganda. See Annex 1 for the values of U.S. military assistance to these eight countries since 1990.

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ANNEX 1

U.S. Military Assistance to Countries Using Child Soldiers, 1990-2007

Burma					
Fiscal Year	IMET	FMF	DCS	FMS	EDA
FY 90-01	$0	$0	$0	$0	$0
FY 02	$0	$0	$0	$0	$0
FY 03	$0	$0	$0	$0	$0
FY 04	$0	$0	$0	$0	$0
FY 05	$0	$0	$0	$0	$0
FY 06	$0	$0	$0	$0	$0
FY 07 (est.)	$0	$0	$0	$0	$0
FY 08 (req.)	$0	$0	$0	$0	$0
Total	$0	$0	$0	$0	$0

Burundi					
Fiscal Year	IMET	FMF	DCS	FMS	EDA
FY 90-01	$1,002,000	$315,000	$264,000	$65,000	$0
FY 02	$0	$0	$0	$0	$0
FY 03	$0	$0	$0	$0	$0
FY 04	$0	$0	$0	$0	$0
FY 05	$0	$0	$0	$0	$0
FY 06	$140,000	$0	$89,000	$0	$0
FY 07 (est.)	$100,000	$0	$7,000	$0	$0
FY 08 (req.)	$200,000	$0	$37,000	$0	$0
Total	$1,442,000	$315,000	$397,000	$65,000	$0

Chad					
Fiscal Year	IMET	FMF	DCS	FMS	EDA
FY 90-01	$2,162,000	$4,646,000	$299,000	$24,601,000	$0
FY 02	$216,000	$0	$0	$472,000	$0
FY 03	$253,000	$5,000	$0	$362,000	$0
FY 04	$573,000	$0	$0	$608,000	$0
FY 05	$331,000	$2,200,000	$0	$42,000	$0
FY 06	$342,000	$0	$43,000	$1,816,000	$0
FY 07 (est.)	$295,000	$0	$0	$0	$0
FY 08 (req.)	$100,000	$0	$0	$0	$0
Total	$4,272,000	$6,851,000	$342,000	$27,901,000	$0

Colombia					
Fiscal Year	IMET	FMF	DCS	FMS	EDA
FY 90-01	$14,583,000	$208,434,000	$92,037,000	$496,591,000	$23,269,564
FY 02	$1,180,000	$0	$20,000	$21,577,000	$0
FY 03	$1,165,000	$17,100,000	$8,425,000	$10,463,000	$33,946,700
FY 04	$1,653,000	$98,450,000	$30,404,000	$22,840,000	$0
FY 05	$1,700,000	$99,200,000	$147,995,000	$40,823,000	$0
FY 06	$1,673,000	$89,100,000	$157,523,000	$140,303,000	$0
FY 07 (est.)	$1,680,000	$90,000,000	$42,542,000	$288,536,000	$0
FY 08 (req.)	$1,500,000	$78,000,000	$151,058,000	$759,886,000	$0
Total	$25,134,000	$680,284,000	$630,004,000	$1,781,019,000	$57,216,264

Cote d'Ivoire					
Fiscal Year	IMET	FMF	DCS	FMS	EDA
FY 90-01	$1,683,000	$4,517,000	$121,000	$2,040,000	$0
FY 02	$0	$0	$0	$0	$0
FY 03	$0	$0	$346,000	$0	$0
FY 04	$0	$0	$91,000	$0	$0
FY 05	$0	$0	$8,000	$0	$0
FY 06	$0	$0	$4,000	$0	$0
FY 07 (est.)	$50,000	$0	$0	$0	$0
FY 08 (req.)	$100,000	$0	$0	$0	$0
Total	$1,833,000	$4,517,000	$570,000	$2,040,000	$0

Democratic Republic of Congo					
Fiscal Year	IMET	FMF	DCS	FMS	EDA
FY 90-01	$468,000	$2,986,000	$44,000	$11,447,000	$0
FY 02	$0	$0	$0	$0	$0
FY 03	$0	$0	$0	$0	$0
FY 04	$321,000	$0	$0	$0	$0
FY 05	$180,000	$150,000	$0	$0	$0
FY 06	$306,000	$0	$0	$1,255,000	$0
FY 07 (est.)	$220,000	$0	$0	$0	$0
FY 08 (req.)	$500,000	$600,000	$0	$0	$0
Total	$1,995,000	$3,736,000	$44,000	$12,702,000	$0

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Sri Lanka					
Fiscal Year	IMET	FMF	DCS	FMS	EDA
FY 90-01	$2,514,000	$0	$8,153,000	$856,000	$13,294,800
FY 02	$259,000	$0	$6,000	$0	$0
FY 03	$307,000	$0	$110,000	$123,000	$33,080,000
FY 04	$551,000	$2,495,000	$1,650,000	$393,000	$0
FY 05	$389,000	$496,000	$466,000	$260,000	$0
FY 06	$529,000	$990,000	$1,334,000	$1,400,000	$0
FY 07 (est.)	$540,000	$900,000	$2,059,000	$60,800,000	$0
FY 08 (req.)	$600,000	$850,000	$7,392,000	$0	$0
Total	$5,689,000	$5,731,000	$21,170,000	$63,832,000	$46,374,800

Sudan					
Fiscal Year	IMET	FMF	DCS	FMS	EDA
FY 90-01	$0	$0	$89,000	$0	$0
FY 02	$0	$0	$0	$0	$0
FY 03	$0	$0	$0	$0	$0
FY 04	$0	$0	$0	$0	$0
FY 05	$0	$0	$0	$0	$0
FY 06	$0	$0	$0	$0	$0
FY 07 (est.)	$100,000	$0	$0	$0	$0
FY 08 (req.)	$300,000	$100,000	$0	$0	$0
Total	$400,000	$100,000	$89,000	$0	$0

Uganda					
Fiscal Year	IMET	FMF	DCS	FMS	EDA
FY 90-01	$2,394,000	$10,360,000	$9,827,000	$3,627,000	$0
FY 02	$0	$0	$0	$0	$0
FY 03	$170,000	$60,000	$200,000	$35,000	$0
FY 04	$371,000	$2,290,000	$794,000	$859,000	$0
FY 05	$293,000	$1,984,000	$5,706,000	$972,000	$0
FY 06	$340,000	$0	$3,302,000	$3,017,000	$0
FY 07 (est.)	$295,000	$0	$277,000	$0	$0
FY 08 (req.)	$500,000	$0	$91,000	$0	$0
Total	$4,363,000	$14,694,000	$20,197,000	$8,510,000	$0

Data sources:

IMET, FMF, DCS, and FMS data for fiscal year (FY) 90 through FY 05 is from the Defense Security Cooperation Agency (DSCA) report, "Foreign Military Sales, Foreign Military Construction Sales, and Military Assistance Facts." (Note: This data is currently under review by the Defense Security Cooperation Agency.)

IMET, FMF, DCS, and FMS data for FY 06 through FY 08 is from the FY 08 Congressional Budget Justification for Foreign Operations.

All EDA data is from the DSCA EDA Database.

Data compiled by Rhea Myerscough, CDI Research Assistant

A program of the Bluhm Legal Clinic

Center for International Human Rights

DAVID SCHEFFER, Director
Mayer, Brown, Rowe & Maw/Robert A. Helman Professor of Law

April 23, 2007

Senator Richard Durbin
Chairman
Subcommittee on Human Rights and the Law
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Criminal Sanctions on Recruitment, Conscription or Use of Child Soldiers in the International Criminal Tribunals

Dear Senator Durbin:

In connection with the hearing on April 24, 2007, before the Subcommittee on Human Rights and the Law entitled, "Casualties of War: Child Soldiers and the Law," you have asked me to recount some of my negotiating experiences on the issue of child soldiers in the making of the international criminal tribunals. During my service as U.S. Ambassador at Large for War Crimes Issues (1997-2001), I led U.S. negotiating teams in the creation of two courts of particular relevance to the issue of child soldiers: the International Criminal Court (ICC) and the Special Court for Sierra Leone (SCSL). The issue of child soldiers was not focused on in the talks during my service in the Clinton Administration (1993-2001) leading to the International Criminal Tribunals for the Former Yugoslavia (1993) and Rwanda (1994) and the Extraordinary Chambers in the Courts of Cambodia (1997-2001). This does not mean child soldiers were unimportant factors in the Balkans conflict or the Rwanda genocide or the Khmer Rouge atrocities of the late 1970's. It simply means that the negotiations and drafting of the statutes for the relevant tribunals covering these atrocities did not focus on or address the issue explicitly in their texts.

Indeed, I well recall visiting the largest prison in Kigali in 1997 and witnessing the presence of thousands of young men who clearly had been under the age of 18 during the genocide, and were being held as genocide suspects by the Rwandan authorities. Thereafter, when the government sought to release a large number of these young men back into their communities due in large measure to the fact that they had been children at the time of the genocide (and such release would lessen prison overcrowding), the Rwandan villagers refused to permit the release as their animus towards these individuals was unabated even though the detainees had been children in 1994 during the genocide.

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Similar sentiments would dominate Sierra Leone society in 2000 during the negotiation of the statute for the SCSL.

The atrocity crimes (genocide, crimes against humanity, and serious war crimes) of the 1990's, particularly in Africa, were perpetrated in no small part by adolescents younger than 18 years of age under the command or influence of older political and military (or militia) leaders. It was, and continues to this day to be, a cynical abuse of childhood for criminal objectives. When I visited atrocity zones, the evidence and allegations often pointed toward child soldier perpetrators and the adult leaders who kidnapped, trained, and often drugged them so that they could be unleashed into rampages of mutilation, killing, and civilian property destruction. My visits to Sierra Leone beginning in 1999 brought me face to face with particularly vivid examples of the use of child soldiers.

The negotiations on the Rome Statute of the ICC preceded those for the SCSL, and so I will begin with the ICC.

1. The International Criminal Court

The multi-year negotiations leading to the Rome Statute in July 1998 held firmly to the important tenet that in the ICC's subject matter jurisdiction no crime would be included unless it was so identified as an international crime under international customary law. It took several years to negotiate Articles 5, 6 (genocide), 7 (crimes against humanity), and 8 (war crimes) of the Rome Statute, in large measure because of the exhaustive efforts to limit the subject matter jurisdiction to actions established as crimes, which can be prosecuted against individuals, under international customary law. Of course, it remains a source of interesting academic argument whether that high standard was met with every single crime catalogued in the final draft of the Rome Statute in July 1998 but by now, nine years later, there should be no doubt as to the criminality under customary international law of all of the crimes in the Rome Statute as they were further clarified in the Statute's Elements of Crimes, which was completed in June 2000.

Two of the primary documents that negotiators referred to in the ICC talks were 1977 Protocols I (international armed conflicts) and II (non-international armed conflicts) of the 1949 Geneva Conventions. These treaties in large part were regarded as critical records of the state of international customary law at the time of the ICC negotiations. The United States had been instrumental in their drafting during the early and mid-1970's and had signed both on December 12, 1977. President Reagan sought Senate advice and consent on ratification of Protocol II in 1986 and President Clinton had resurrected that request with the Senate during the 1990's. (Both remain unratified by the United States.) Though President Reagan raised concerns about Protocol I, and thus it was not submitted to the Senate for its advice and consent on ratification, those concerns did not include the key provisions on protection of children. Most of Protocol I was long regarded by the U.S. Government as reflecting international customary law, and that certainly included Article 77 (Protection of Children). Articles 4(3) and 6 of Protocol II, which concern the protection of children in non-international conflicts, also reflect international customary law and were regarded as such during our negotiations on the Rome Statute.

The primary U.S. concern during the negotiations on child soldiers was the age below which it would be prohibited to recruit the individual into national armed forces. The Defense Department was determined to preserve its right to recruit 17 year-olds during their senior year in high school and permit their voluntary enlistment as 17-year-olds. (Compulsory recruitment of persons below the age of 18 for any type of military service would continue to be prohibited under U.S. law.) However, I do not recall the Defense Department ever arguing for any right to have persons under the age of 18 take a direct part in hostilities. (The later U.S. ratification of the Optional Protocol to the Convention on the Rights of the Child in December 2002 confirms this.) There were strong efforts by other governments, including among our European allies, to set the bar at 18 years of age and prohibit all conscription, enlistment and use in hostilities of individuals below that age. NATO government negotiators met regularly, hosted by Germany, to discuss the whole range of crimes and this particular issue took up a fair amount of our time. Some governments, particularly in Africa and Asia, showed little interest in a high threshold age of 18. Utilizing the words "conscripting or enlisting" rather than "recruiting" in the war crimes provisions made the critical difference for the Defense Department and the U.S. delegation and paved the way for adoption of the language now found in Article 8 of the Rome Statute on this issue.

Given the precedents set by the 1977 Protocols I and II, both of which confirm the age of 15 as the threshold below which individuals should neither take a direct part in hostilities nor be recruited, ICC negotiators (including the U.S. delegation) ultimately arrived at wording that reads as follows:

1) Article 8(2)(b)(xxvi) (international armed conflicts): "Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities."
2) Article 8(2)(e)(vii) (non-international armed conflicts): "Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities."

These provisions were stricter in prohibitive language than Protocols I (Article 77) and II (Article 3). That in part is because we were negotiating criminal law for a criminal court and not the primarily state responsibility provisions of the Protocols (although Protocol I criminalized certain "grave breaches" but which did not include Article 77). We also were mindful of the significant abuse of children in this respect during the atrocities of the 1990's. We believed that the law had evolved from the 1970's, including in national criminal codes and national practices, to firmly uphold explicit criminalization of such conduct towards children under the age of 15. I do not recall a single statement challenging the age of 15 as an irrefutable age below which such conduct must not be permitted.

However, there was some discussion among negotiators to ensure that children who join in acts of personal self-defense as a matter of human survival, particularly of the family, home, or community, against the firepower of direct armed assaults should not necessarily trigger any prosecution of those who believe it is imperative to use children in such circumstances. Although this contingency is not addressed in the definitions of war crimes in Article 8 of the Rome Statute, the self-defense argument can be raised pursuant to Article 31(1)(c).

It is worth noting that in the ICC's Elements of Crimes, a document which the U.S. delegation took the lead in drafting and successfully negotiating in 1999 and 2000, there are five elements, two of which merit special attention. The first is that, "The perpetrator knew *or should have known* that such person or persons were under the age of 15 years." (Emphasis added) This raises a rather high bar for an accused perpetrator to scale in order to prove authentic ignorance of the child's age. The second is that, "The perpetrator was aware of factual circumstances that established the existence of an armed conflict." This knowledge criterion is standard in international criminal law and is important in order to place these prohibitions regarding the treatment of children within the realm of the law of war, and hence of war crimes.

The first criminal case before the ICC is *Prosecutor v. Mr. Thomas Lubanga Dyilo*, which concerns alleged war crimes in the Democratic Republic of the Congo. Mr. Lubanga is charged with enlisting and conscripting children under the age of 15 years into the *Forces Patriotiques pour la Liberation du Congo*, the military wing of the *Union des Patriotes Congolais*, and using such children to participate actively in hostilities in the Ituri region from September 2002 to 13 August 2003. In late January 2007 the ICC Pre-Trial Chamber confirmed three such charges brought by the ICC Prosecutor against Mr. Lubanga. The judges examined in considerable detail the various components of the Article 8(2)(b)(xxvi) and Article 8(2)(e)(vii) war crimes in the Rome Statute. Interestingly, they found that the term "national armed forces" in Article 8(2)(b)(xxvi) was not intended to be limited to the armed forces of a State. Thus, even for an international armed conflict, conscripting or enlisting child soldiers into a non-governmental force (such as Mr. Lubanga's armed group) would be conduct falling within the criminal ambit of the Rome Statute. As a negotiator, I do not recall seeking to narrow the application of Article 8(2)(b)(xxvi) responsibility only to governmental armed forces engaged in an international armed conflict, and therefore I view the Pre-Trial Chamber's judgment to be right on the mark.

2. The Special Court for Sierra Leone

The negotiations over the establishment of and statute for the Special Court for Sierra Leone occurred primarily in 2000. The collapse of the Lomè Peace Agreement, the horrific violence that erupted again in 2000, and the kidnapping of U.N. peacekeepers in May 2000 generated the necessary momentum for serious negotiations to begin in June 2000 just prior to and while I was in New York for the U.N. talks on the Rules of Procedure and Evidence and the Elements of Crimes for the ICC.

The character of the atrocity crimes in Sierra Leone involved child soldiers to a very significant degree. That is well known. Negotiators focused on how to criminalize the conduct of adult perpetrators who used child soldiers to accomplish their criminal objectives and to what extent, if at all, the child soldiers themselves should be prosecuted. From the beginning of the talks, there was enormous pressure from the Government of Sierra Leone and interest groups in that country to enable the SCSL to prosecute juveniles between 15 and 18 years of age (namely, anyone 15 years or older) for atrocity crimes (primarily crimes against humanity). This is because so many of the gangs of perpetrators who specialized in mutilations of victims were persons of such youth or even younger and their gang leaders were typically within this age bracket. For the average surviving victim in Sierra Leone, these were the bad guys. It was incomprehensible to the people of Sierra Leone that an

international court would be established which did not hold such individuals (many of whom would soon be 18 or older, if not already of such mature age) responsible under criminal law for their alleged crimes.

Meanwhile, international organizations, such as UNICEF, and non-governmental organizations keenly focused on the rights of children found the Sierra Leone position utterly unacceptable under modern international law (be it international criminal law or international human rights law). Initially, the U.S. Government aligned itself with this camp and argued against any criminalization of the statute for the SCSL for persons under the age of 18. As lead U.S. negotiator, I personally pressed the UNICEF rationale with the Sierra Leone Government and other governments. But as the weeks wore on during the summer of 2000, it became apparent that a compromise had to be struck with Freetown in order to come to closure on the text of the SCSL Statute.

By the Fall of 2000, we agreed on wording that criminalized the conduct of the adult political and military leaders in creating gangs and militia groups of child soldiers. Article 4(c) of the SCSL Statute criminalized "[c]onscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities." This wording obviously was lifted from Article 8 of the Rome Statute of the ICC, which had been settled more than two years prior to the late 2000 negotiations finalizing the SCSL Statute. At the same time, Article 7 of the SCSL Statute, which is unique among all the international and hybrid criminal tribunals, tilted toward the gale force winds of Sierra Leone popular and governmental opinion and confirmed criminal jurisdiction over persons of 15 years of age and older. But it did so with some caveats which resulted from long negotiations. Article 7 in its entirety reads:

Article 7
Jurisdiction over persons of 15 years of age

1. The Special Court shall have no jurisdiction over any person who was under the age of 15 at the time of the alleged commission of the crime. Should any person who was at the time of the alleged commission of the crime between 15 and 18 years of age come before the Court, he or she shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child.

2. In the disposition of a case against a juvenile offender, the Special Court shall order any of the following: care guidance and supervision orders, community service orders, counselling, foster care, correctional, educational and vocational training programmes, approved schools and, as appropriate, any programmes of disarmament, demobilization and reintegration or programmes of child protection agencies.

Thus any juvenile who falls within the jurisdiction of the SCSL would, if prosecuted, be treated with special care and with the primary aim of rehabilitation rather than retributive punishment.

Article 19(1) further confirmed that no juvenile offender would be subject to imprisonment. These caveated provisions constituted negotiated compromise language enabling the SCSL to be established with the backing of the United Nations as a full treaty partner.

After the contentious negotiations over the provisions of the SCSL Statute, the SCSL prosecutor, beginning with David M. Crane, made the discretionary decision not to charge any juvenile. If one focuses on the personal jurisdiction threshold in Article 1(1) of the SCSL Statute, this becomes readily understandable. Article 1(1) requires as follows: "The Special Court shall, except as provided in subparagraph (2), have the power to prosecute *persons who bear the greatest responsibility* for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone." (Emphasis added.) The SCSL prosecutor had little difficulty arriving at the discretionary conclusion that no juvenile bore the "greatest responsibility" for the atrocity crimes committed in Sierra Leone. In short order, those who bore the "greatest responsibility" were top leaders of the Revolutionary United Front, the Armed Forces Revolutionary Council, and the Civil Defence Forces, as well as then President of Liberia, Charles Taylor. In all of our negotiations over Article 1(1), the discussion over whether to narrow the field of candidates for prosecution to those bearing the "greatest responsibility" never elicited the name or even concept of a juvenile fitting that category. Thus, no individual who was a juvenile under the age of 18 years of age at the time of the atrocity crimes in Sierra Leone has ever been indicted by the SCSL.

The indictments handed down by the SCSL have been grounded in Article 4(c) of the SCSL Statute. Almost every defendant before the SCSL today is charged under Article 4(c) with the conscripting or enlisting of children under the age of 15 years into armed forces or using them to participate actively in hostilities. In *Prosecutor v. Sam Hinga Norman* (2004), the SCSL Appeals Chamber rejected the defense counsel's argument seeking to deny the legality of Article 4(c) as a rule of international customary law. The Appeals Chamber cited the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, the Rome Statute of the International Criminal Court, and the domestic law and practice of nations as evidence supporting its judgment that the Article 4(c) prohibition is customary international law. The Appeals Chamber did not believe that the legal principle of non-retroactivity had been breached. State legislation on the subject is implicit in finding such conduct criminal in character and the rejection of child soldiers has been widespread since 1994, the Appeals Chamber concluded. The judges believed that by 1996 it was no longer posible to claim to be acting in good faith while recruiting child soldiers. They held that the Government of Sierra Leone was well aware in 1996 that children below the age of 15 should not be recruited. Further, citizens of Sierra Leone and persons in leadership roles could not possibly argue that they did not know that recruiting children was a criminal act in violation of international humanitarian law. In sum, the Appeals Chamber found that the prohibition set forth in Article 4(c) has crystallized as customary international law.

3. Conclusion

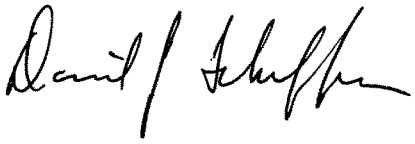
It might be worth considering whether the United States should seek to change the war crimes provisions on child soldiers in the Rome Statute of the ICC and increase the age of permisible conscription, enlistment, or use of children to, for example, 18 years of age. An important opportunity looms on the horizon in the summer of 2009. That is when the review conference for the Rome Statute of the ICC will be held, and all states parties to the Rome Statute will be entitled to offer amendments for the first time since the ICC commenced operations on July 1, 2002.

If there is interest and support in the U.S. Congress and perhaps in the Executive Branch to criminalize the conscription, enlistment, or use of persons in hostilities who are *less than 18 years of age* (rather than the current standard of less than 15 years of age), the United States will need to become a state party to the Rome Statute by the summer of 2009 in order to fully participate in the 2009 review conference and press and vote for adoption of this type of amendment. Such an initiative could become at least part of a historic moment of renewed leadership by the United States in the development of international criminal law and in the protection of the rights of the child. If Pentagon recruitment requires flexibility regarding 17-year-olds, then Washington should write an amendment that bluntly distinguishes between the legal recruitment of 17-year-old persons under specified circumstances and the illegal conscription, enlistment, or use in hostilities of those who are less than 18 years of age.

Thank you for this opportunity to share these reflections with the subcommittee.

With best regards,

Sincerely,



David J. Scheffer

Statement of Senator Tom Coburn, M.D.
Hearing: "*Casualties of War: Child Soldiers and the Law*"
Subcommittee on Human Rights and the law
United States Senate Committee on the Judiciary
April 24, 2007

I would like to thank Chairman Durbin for holding this hearing on a monumentally important issue. Tragically, over 2 million children around the world have lost their childhoods, their innocence, and ultimately their lives following forced or coerced recruitment into militaries or militias.[1] Another 6 million have suffered disabling injuries, and 250,000 children continue to be exploited today.[2]

Children should never participate in hostilities. As a nation we have recognized this principle through the treaties we have ratified, including the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict[3] and the International Labor Organization Convention 182 on the Worst Forms of Child Labor.[4] This principle is well-recognized throughout the international community as well. Nonetheless, children are still being ripped from their families and forced into a dark world where they serve as soldiers, messengers, spies, porters, and sex slaves.

I am encouraged that in February of this year, representatives of 58 countries signed a nonbinding accord not to use children under 18 in wars.[5] The agreement included 10 of 12 countries identified by the United Nations as using child soldiers.[6] Additionally, the International Criminal Court (ICC) chose for its first case the prosecution of a warlord who forced children as young as 10 to fight in the Democratic Republic of Congo.[7] The

[1] *Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, U.N. G.A., 61st Sess., Agenda Item 62 (a), at 4, U.N. Doc. A/61/150 (August 17, 2006).
[2] *Id.*
[3] Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children, Feb. 12, 2002, A/RES/54/263.
[4] Armed Conflict and the International Labor Organization Convention 182 on the Worst Forms of Child Labor, November 19, 2000.
[5] Ariane Bernard, *World Briefing Europe: France: 58 Nations Vow to End Use of Child Soldiers*, N.Y. Times, February 7, 2007.
[6] *Id.*
[7] Daniel Howden and Steve Bloomfield, *Historic Trial puts Warlord in Dock Over Child Soldiers*, The Independent, January 30, 2007.

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ICC has also issued warrants for members of the Lord's Resistance Army (LRA) in Uganda for the same crimes.[8]

However, more must be done by the United States and other Nations to bring an end to this victimization of children. The United States can begin by carefully evaluating the assistance we are providing to countries that use children as soldiers. Despite our strong condemnation of the use of child soldiers, according to the Center for Defense Information, the United States has supplied military assistance to 14 countries where children under age 18 have been forcibly recruited, have taken direct part in hostilities, or have been forced to support both government and non-state armed groups.[9] The U.S. has supplied military assistance to 9 of these countries where "children were recruited or used as soldiers by government security forces or government-sponsored armed groups."[10]

To address this inconsistency, I am pleased to join Senators Durbin and Brownback in their effort to condition U.S. military assistance on a country's efforts to eliminate the use of child soldiers, by cosponsoring The Child Soldiers Prevention Act of 2007 (S. 1175). If this Act becomes law, the United States will use the State Department's Country Reports on Human Rights to determine which countries are exploiting children in combat. Countries who are identified as recruiting or using child soldiers in government armed forces or government-supported paramilitaries will be eligible to receive U.S. military assistance only to end the use of child soldiers and otherwise modify their armed forces until the problem is remedied. This bill presents a crucial first step to addressing the issues that accompany the use of child soldiers.

I also believe that we need to examine our immigration and criminal laws carefully to see if there are any changes that need to be made to address this issue. Children who are forced to take up arms or otherwise participate in hostilities should not be barred admission into the United States as refugees for that reason alone. Also, those who recruit and use child soldiers should

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[8] *Id.*

[9] U.S. Military Assistance to Countries Using Child Soldiers, 1990-2007, Center for Defense Information, http://www.cdi.org/PDFs/ChildSoldiersUpdate2006Charts.pdf (Analyzing the U.S. Department of State's Country Reports on Human Rights Practices, http://www.state.gov/g/drl/rls/hrrpt/2006/., which discusses the "'nature and extent of the compulsory recruitment and conscription of individuals under the age of 18' by all armed groups in every country, and what steps have been taken by the governments of the respective countries to eliminate such practices.")

[10] *Id.*

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not be able to seek refuge in the United States with impunity. We need to be certain that our laws treat former child soldiers fairly and hold the perpetrators of crimes against these children accountable.

I look forward to hearing the testimony today.

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Statement
United States Senate Committee on the Judiciary
Casualties of War: Child Soldiers and the Law
April 24, 2007

The Honorable Richard J. Durbin
United States Senator , Illinois

Statement of Senator Richard Durbin
Chairman, Subcommittee on Human Rights and the Law
Hearing on "Casualties of War: Child Soldiers and the Law"
April 24, 2007

Good morning and welcome to "Casualties of War: Child Soldiers and the Law," the third hearing of the Subcommittee on Human Rights and the Law.

This is the first time in Senate history that there has been a subcommittee focused on human rights.

And this is the first-ever Congressional hearing on the urgent human rights crisis of child soldiers. That fact alone demonstrates the need for this new Subcommittee.

As this hearing's title suggests, during times of war both the rule of law and children are victims.

There is a clear legal prohibition on recruiting and using child soldiers, and yet around the world hundreds of thousands of boys and girls are used as combatants, porters, human mine detectors and sex slaves. While most serve in rebel or paramilitary groups, some government forces use child soldiers as well.

In countries like Burma, Uganda, and Colombia, children's health and lives are endangered and their childhoods are sacrificed.

Today we will discuss the tragedy of child soldiers and why the law has failed so many young people around the world.

Cicero said, "In times of war, the law falls silent."

The American legal system rejects that notion. There is no wartime exception to the Constitution.

International human rights law, created primarily by Americans and based largely on American legal principles, takes the same position – fundamental rights must be protected even during wars or other armed conflicts.

Yet so often in times of war or perceived threat, human rights are sacrificed.

There is no better example then the tragedy of child soldiers. The law provides special protections to children, the most vulnerable members of our society, but during wars they are often the most exploited.

Over 110 countries, including the United States, have ratified the Optional Protocol to the Convention on the Rights of the Child, which prohibits the recruitment and use of child soldiers.

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But if the law is not enforced, it is meaningless. This Subcommittee has found similar problems when it comes to genocide and human trafficking.

When there is no accountability for violating the law, governments and rebel forces can violate human rights with impunity.

During today's hearing we will discuss legal options for holding accountable those who recruit or use child soldiers.

The Special Court for Sierra Leone is prosecuting nine people for using child soldiers. And the International Criminal Court's first prosecution is against Thomas Lubanga of the Democratic Republic of Congo for recruiting and using child soldiers.

These are positive developments, but they pale in comparison to the scale of the child soldiers crisis. The average perpetrator runs very little risk of being prosecuted.

One option, which we will discuss today, is for national courts to play a greater role in prosecuting perpetrators. I am sorry to say that recruiting and using child soldiers is not a crime under U.S. law, so the U.S. government is unable to prosecute perpetrators who are found in our country.

Immigration law is another important tool for holding individual perpetrators accountable. Today we will discuss whether the U.S. government has sufficient authority to deport or deny admission to an individual who has recruited or used child soldiers.

Governments must also be held accountable for their actions. That's why Senator Sam Brownback and I have introduced the Child Soldiers Prevention Act of 2007, legislation that would limit U.S. military assistance to countries that are clearly identified in the State Department's Human Rights report as recruiting or using child soldiers.

Our bill would ensure that U.S. taxpayer dollars are not used to support this abhorrent practice by government or government sanctioned military and paramilitary organizations.

U.S. military assistance could continue under this bill, but it would be used only to remedy the problem by helping countries successfully demobilize their child soldiers and professionalize their forces.

We must work to eliminate the use of child soldiers, but as long as the practice persists, we must also ensure that the law facilitates and encourages the rehabilitation and reintegration of these young people back into civilian life.

Sometimes the law contributes to the stigmatization of former child soldiers. For example, provisions of our immigration law brand former child soldiers as terrorists and prevent them from obtaining asylum or refugee status in the U.S. We must give the government flexibility to consider the unique mitigating circumstances facing child soldiers and allow child soldiers to raise such claims when they seek safe haven in our country.

We also should support programs that provide psychological services, educational and vocational training, and other assistance to these traumatized young people.

As I have said before, this Subcommittee will focus on legislation, not lamentation. I look forward to

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working with the members of this Subcommittee to ensure that our laws treat former child soldiers fairly and hold accountable those who recruit and use child soldiers. And these laws must be enforced.

We must prove Cicero wrong. Even during times of war, the law should never fall silent for the most vulnerable among us -- our children.

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Statement
United States Senate Committee on the Judiciary
Casualties of War: Child Soldiers and the Law
April 24, 2007

The Honorable Russ Feingold
United States Senator , Wisconsin

Hearing before the Senate Judiciary Committee Subcommittee on Human Rights and the Law

"Casualties of War: Child Soldiers and the Law"

Tuesday, April 24, 2007 at 10:00 a.m

Senator Russ Feingold
Opening Statement

Thank you Mr. Chairman. First, I want to thank you for holding this important hearing, and for introducing – along with our colleague, Senator Brownback – the Child Soldiers Prevention Act. This legislation is a critical step toward ending the use of child soldiers around the globe by prohibiting U.S. military assistance to countries recruiting or using child soldiers in hostilities.

I would also like to thank all of the witnesses here today, who have experienced or witnessed what child soldiers are forced to endure and who each devote tremendous time and energy to fighting injustice. Thank you for coming to teach us about this tragic practice– one that has gone on for far too long in too many places.

The Child Soldiers Prevention Act takes a multifaceted approach to dealing with the problem and encourages more robust programming for the demobilization, disarmament, and rehabilitation of child soldiers, and the communities from which they come. I am pleased to cosponsor this bill because I feel very strongly that the United States must do more to end the exploitation of children, whatever form this abuse takes and wherever it occurs.
By helping to ensure that US military assistance is only provided to countries whose policies respect human rights, this bill will send a strong message that the use of child soldiers is not acceptable.

The exploitation of children violates the basic human rights of one of society's most vulnerable populations, and yet, for far too long, children have been not only the passive victims of military campaigns but also active, if unwilling, participants.

In Burma, Laos, Sri Lanka, Colombia, and particularly in African countries like Uganda, Sudan, and the Democratic Republic of Congo, children as young as eight are routinely abducted and forced to participate in acts of extreme violence, sometimes against their own families. They are forced to carry out murders, mutilations and other human rights

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abuses, even as abuses are inflicted upon them. Many child soldiers are also subject to coerced drug addiction, physiological manipulation, and sexual abuse. At least one-third of the estimated 300,000 child soldiers today are girls, who are often enslaved for sexual purposes by militia commanders.

Even when hostilities cease, these children continue to suffer the loss of their childhood, connection to their families and communities, and the tools to successfully pursue a non-violent life. Often uneducated, traumatized, and stigmatized, many of these young people remain trapped in cycles of brutality and abuse long after militias are disbanded.

In the past two decades, the use of child soldiers has gone from being merely morally reprehensible to being a criminal violation of international law. The U.S. has demonstrated its commitment to ending the use of child soldiers around the world by ratifying and implementing the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children and Armed Conflict, and last winter, Congo's National Assembly transferred a former militia leader to the International Criminal Court to face charges of recruitment of child soldiers. Next month, the Special Court of Sierra Leone is expected to deliver the first two convictions on charges of enlisting children to actively participate in hostilities, which the Court considers a "serious violation of international humanitarian law." These are all important steps – across multiple levels – towards ending impunity for this reprehensible practice.

The conscription and abuse of child soldiers is not new, but a growing awareness of what these young people are forced to endure and the lasting damage caused requires that we work diligently here at home, as well as with the international community, to monitor and end the use of child soldiers, hold governments accountable for their violations, and improve programs of prevention and rehabilitation.

The use of child soldiers poses a threat to the stability and security of communities, countries, and society at large. Ending these abuses should be a priority for the United States and for governments around the world.

Thank you again, Mr. Chairman, for holding this important hearing to raise awareness and encourage action to protect children around the world.

TESTIMONY OF
ANWEN HUGHES

SENIOR COUNSEL
REFUGEE PROTECTION PROGRAM
HUMAN RIGHTS FIRST

HEARING ON CHILD SOLDIERS

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW

APRIL 24, 2007

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Introduction

Chairman Durbin, Ranking Member Coburn and Members of the Subcommittee, thank you for inviting me here today to offer the views of Human Rights First on the treatment under our immigration laws of former child soldiers and of those who conscript them and force them into war. On behalf of Human Rights First, I want to thank you, Mr. Chairman, for your steadfast leadership on human rights and in particular for spearheading the creation of this historic Subcommittee on Human Rights and the Law. We believe the creation of this Subcommittee is an important signal that the Senate understands human rights treaty obligations to be not just a matter of foreign policy, but—as our Constitution says—part of "the supreme law of the land," and properly the subject of the Committee on the Judiciary. This awareness is particularly important in the area of refugee protection, where our domestic statutes derive quite directly from international law, yet where application of those same statutes has deviated in significant ways from the treaty obligations they were enacted to implement.

My name is Anwen Hughes, and I am an attorney with the Refugee Protection Program of Human Rights First. For nearly 30 years, Human Rights First has worked to protect and promote fundamental human rights and to ensure protection of the rights of refugees. Our organization also operates one of the largest pro bono representation programs for asylum seekers in this country, providing free legal services to refugees who cannot afford counsel. Our views on the U.S. asylum system are informed by many years of working directly with the refugees that system was set up to protect.

Human Rights First is committed to ensuring that the protections guaranteed to refugees and asylum seekers under the 1951 Refugee Convention and its 1967 Protocol remain available to those who seek safety in the United States. At the same time, we have a longstanding commitment to the proper application of the "exclusion" clauses of the Refugee Convention, which place refugees who have committed serious violations of the human rights of others or other serious crimes, outside the protection of the international refugee regime. We have also long been committed to ensuring that our legal system holds human rights abusers accountable for their actions.

U.S. immigration laws bar most of those who use child soldiers in violation of international law from entering or remaining in the United States. But those same provisions of the law, as currently interpreted by the agencies charged with their enforcement, can exclude former child soldiers from refugee protection and discourage humanitarian organizations from providing them with the assistance they need. Subjecting all former child soldiers to the same sanctions as those who victimize them is damaging to the children themselves and to international efforts to prohibit and prevent the use of child soldiers. At the same time, one category of those who use child soldiers—those who recruit and use children as soldiers in their own national armies—are not necessarily barred from entry into the United States under our current immigration laws.

I. Protecting the Victims and Excluding the Perpetrators: How the Refugee Convention and the Immigration and Nationality Act are Supposed to Work

In the wake of World War II, the United States played a leading role in building an international refugee protection regime to ensure that the nations of the world would never again refuse to offer shelter to people fleeing persecution. The United States has committed to the central guarantees of the 1951 Refugee Convention and its 1967 Protocol. The United States passed the Refugee Act of 1980 in order to bring our nation's laws into compliance with the Refugee Convention and Protocol. That legislation incorporated into the Immigration and Nationality Act provisions establishing the domestic asylum and refugee resettlement systems that in the years since then have helped over two million refugees escape persecution and begin new lives in this country.

Among those who seek the protection of asylum or refugee status are a small number of former child soldiers. International humanitarian law and human rights law prohibit the recruitment and use of children as soldiers and in other combat-related roles. The forced recruitment of children under the age of 18 for use in armed conflict is prohibited by the Worst Forms of Child Labor Convention of the International Labor Organization (ILO). The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict sets 18 as the minimum age for any conscription or forced recruitment, or for direct participation in hostilities. It also prohibits non-state armed forces from recruiting or using in hostilities children under the age of 18. The recruitment of children under the age of 15 or their use in hostilities, whether by national armies or non-state armed groups, is also a war crime under the Rome Statute of the International Criminal Court (ICC). Despite these prohibitions, hundreds of thousands of children continue to serve in government and rebel forces in conflicts around the world. In addition to serving as active combatants, children are used as porters, as spies, as messengers, as cooks and servants, or to lay or clear landmines. Both boys and girls have been involved in some of the worst conflicts of recent history. Some children are able to escape the rebel or national armies that conscript them and flee their countries to seek shelter from further persecution. Some of these children are candidates for resettlement in the United States as refugees; others who reach this country on their own may seek asylum here.

We incorporated into our law the Refugee Convention's promise to provide protection to refugees, but also the Convention's principle that some individuals who meet this definition should nonetheless be excluded from protection. Under the Refugee Convention, these "exclusion clauses" apply to people who have committed heinous acts and crimes so grave as to make them undeserving of international protection as refugees, despite a well-founded fear of persecution. A separate provision of the Convention allows the return of refugees who pose a danger to the security of the host country. The Immigration and Nationality Act incorporated bars to asylum and to admission as a refugee that track the broad categories of the Convention's exclusion clauses and reflect the same underlying principles. People who engaged or assisted in or incited the persecution of others, people who have been convicted of a particularly serious crime in the United States or have committed a serious non-political crime abroad, people who

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have engaged in terrorist activity, who are representatives of foreign terrorist organizations, or who otherwise pose a danger to the security of the United States, have long been barred from asylum; refugees are subject to an overlapping set of requirements that they be admissible to the United States.

The purpose of these provisions—which is an important purpose, and one that we support—was to ensure that perpetrators of heinous acts and serious crimes are identified and cannot use the refugee protection system to avoid being held accountable for their actions, and that persons who threaten the safety of the community in their host countries can be removed.

II. Excluding the Victims: Obstacles to Refugee Protection for Former Child Soldiers

But the passage of the USA PATRIOT Act in 2001, followed by the REAL ID Act in 2005, has turned this scheme on its head. As a result of these statutory changes, and their unreasonable interpretation by the federal agencies charged with enforcing them, we are currently experiencing a crisis in the U.S. asylum and refugee resettlement system, in which refugees who were victims of serious human rights abuses are being excluded from protection under immigration provisions intended to bar those who victimized them. Child soldiers in need of refugee protection represent a subset of those affected by this insanity.

The USA PATRIOT Act expanded the INA's definition of "terrorist activity" to include "material support" to any organization that has engaged in "terrorist activity," which, in turn, was defined to include almost any unlawful use of a "weapon" for any purpose other than "mere personal monetary gain." Under a literal reading of these definitions—and the Departments of Justice, Homeland Security, and State have been reading them literally—groups are considered "terrorist organizations" for immigration purposes even though they do not appear on any of the U.S. government's lists of "designated" terrorist organizations, simply by virtue of the fact that they have used armed force. In 2005, the REAL ID Act expanded the definition of "non-designated" terrorist organization to cover any group that has a subgroup that uses weapons. Concretely, this means that any refugee who has ever borne arms (unless in service of his own country's army), or who has ever provided assistance to those who have, or is a member of or has provided support to any group some of whose members have borne arms, is now barred from refugee protection.

The provisions have yielded absurd enough results when applied to adults who took up arms of their own free will, or provided some level of support to groups that included an armed wing. They have, for example, stranded Hmong and Vietnamese Montagnard refugees, some of whom fought alongside U.S. forces in the Vietnam war, and resulted in the denial of asylum to a group of refugees from Burma's Chin ethnic minority who provided what was considered to be "material support" to the Chin National Front, which has used force against the armed forces of the Burmese military junta. As these provisions are being interpreted, they can exclude a refugee from

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protection even though he or she has not committed—or even supported—any act that should give rise to exclusion under the Refugee Convention. Engaging in combat is being characterized as terrorism when it only involves fighting combatants on the other side, so that refugees who have fought in any force other than a national army within its national borders are being barred as terrorists based on that fact alone. The bar is triggered even by non-violent activity: the concept of "material support" also sweeps in those who served as porters or as cooks. Child soldiers thus stand to be excluded from protection even without any evidence that they were involved in any human rights violations—aside from the violation of their own rights as children, of which they were the victims.

But the absurdity has been compounded by the fact that the relevant federal agencies refuse to recognize any legal exceptions or defenses to these bars. Under the interpretations now prevailing at the Departments of Homeland Security, Justice, and State, the terrorism-related bars to asylum and refugee protection know no exceptions. No form of assistance is too immaterial or too small to trigger exclusion from international refugee protection—pocket change, a chicken, even emergency medical care, the government has argued that all of these constitute "material support" to terrorism. Worse, the government is applying this interpretation even to refugees whose "support" was provided under coercion, or in other circumstances where the criminal law, for example, would recognize an implicit defense. In cases before the immigration courts, the Department of Homeland Security is applying the same interpretation to the "persecutor" bar, and arguing for the categorical exclusion from protection of any refugee who was involved in the persecution of others, regardless of whether he or she acted under duress.

As a result of these interpretations, a Sri Lankan fisherman who was abducted by the Liberation Tigers of Tamil Eelam (LTTE) and paid ransom money for his release, has been sitting in a U.S. immigration jail for over two years now. This Sri Lankan asylum seeker was denied asylum by an immigration judge who recognized that he had paid the LTTE (a designated terrorist organization known for its intimidation and killing of civilians) under coercion, but held that this was legally irrelevant. The fisherman is now waiting for the Board of Immigration Appeals to rule on this issue. He has been waiting since the spring of 2005.

Likewise, a nurse from Colombia has had her application for asylum rejected. In Colombia, she had been kidnapped and physically assaulted by Revolutionary Armed Forces of Colombia (FARC) guerrillas, who forced her, often at gunpoint, to give medical treatment to members of their forces. This woman fled to the United States with her young daughter and applied for asylum. Her application was rejected by the Department of Homeland Security, which decided that the medical care she had provided under duress constituted "material support" to the FARC. DHS initiated removal proceedings against the nurse, whose case is now pending before the immigration courts. Deportation to Colombia could literally be a death sentence for this woman and her 12-year-old daughter.

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The same reasoning is being applied overseas in the context of refugee resettlement. A Sierra Leonean woman who survived atrocities at the hands of Revolutionary United Front (RUF) rebels, for example, has seen the harm she suffered turned into a reason to block her resettlement in the United States. Rebels attacked her home, set her son on fire, killed another family member, and then held the family captive in their own home for several days. During this time, the rebels repeatedly raped the woman and her daughter, and forced them to wash their clothes and cook for them. This woman is unable to be resettled in the United States because the cooking and cleaning she did while enslaved by the RUF rebels, a designated terrorist organization, is being characterized as "material support" to the RUF.

For child soldiers, this means that neither their youth, nor the involuntariness of their conscription, nor the fact that they acted under circumstances that any reasonable person would consider to be duress, nor any of the other circumstances that might exculpate them, will protect them against the reflexive and categorical application of these bars to protection. This interpretation places the relevant provisions of the Immigration and Nationality Act in direct conflict with international law, which requires that exclusion from refugee protection be based on individual responsibility (requiring personal involvement, with intent and knowledge, and in the absence of defenses) for an excludable act, with the goal of excluding only those who made a knowing moral choice to do what they did.

The fact that children are ill-equipped to make such choices is part of the reason armies choose to conscript them. Immature, physically vulnerable, and easily manipulated, they are generally unable to refuse the orders they are given. Children targeted for conscription are often among the most vulnerable children in their societies to start with. Many are abducted into government or rebel armies, and maintained there by threat of force or by the sight of what happens to other children who try to escape. They are often drugged to numb their fear or their resistance to the violence they are forced to engage in. Under the Refugee Convention and under a reasonable interpretation of our immigration statutes, all of these circumstances ought to be taken into consideration as possible exceptions or defenses to their exclusion from protection. Instead, the prevailing U.S. government interpretations would treat them as adults before their time, and thrust them into a system where adults are being excluded without regard for the degree of culpability for their wrongdoing.

With respect to many types of refugee cases affected by the "terrorism" bars, the federal agencies involved have belatedly recognized that the sweeping definitions in the INA, and the agencies' blunt interpretation of those definitions, are sowing injustice. The statute provides authority for the Secretaries of State (in overseas cases) and Homeland Security (in cases arising in the United States), in consultation with the Attorney General and each other, to waive application of some, though not all, of the terrorism-related bars in particular cases. Statutory authority for the Executive, in its sole unreviewable discretion, to decline to apply these bars has been the Executive's preferred solution to the current crisis. We do not consider this to be a legally appropriate or indeed a practical solution to asylum adjudications. Children and other asylum seekers should have a legal

right to assert such exceptions or defenses as apply to their cases, and to have these claims reviewed through the normal process of adjudication that applies to their case as a whole.

The practical experience of implementation of statutory waiver authority, moreover, has been exceedingly slow, particularly in the domestic asylum context, and has failed to protect many refugees in urgent need. The Department of Homeland Security has so far failed to implement its waiver authority with respect to anyone who provided "material support" under duress to any group that has been designated or listed as a terrorist organization by the U.S. government. Such groups, unfortunately, include many rebel and paramilitary groups that use or used child soldiers, including the Lord's Resistance Army (LRA) in Uganda, the Revolutionary United Front (RUF) in Sierra Leone, and the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka. This means that even children who provided only non-violent support to groups of this kind, and did so under coercion, are not currently being granted refugee resettlement or asylum. Two years after the current statutory waiver provisions were enacted through the REAL ID Act, only four asylum seekers have actually been granted waivers under the exercises of authority that *have* been announced, and there is still no process to implement any waiver authority for those who are in removal proceedings.

But for children and others who have actually been combatants, the current statute offers no possibility of a waiver. Although the "material support" ground of inadmissibility and deportability under the INA is waivable, actually having "engaged in terrorist activity" oneself (which, again, is interpreted to include any use of armed force outside a context of state authority) is not.

In addition, although the "terrorism" bars, due to their rampant overbreadth, have become the prime grounds for the government's exclusion arguments in cases involving refugees who have had some connection with non-governmental armed groups, they are not the only bar that can apply to child soldiers. As noted earlier, refugees who have engaged or assisted in the persecution of others are also barred from asylum, and with regard to this bar, trial attorneys with the Department of Homeland Security are likewise arguing that no defenses apply. And there is no statutory authority to waive application of the persecutor bar, even as a matter of unreviewable executive discretion. In any case, our experience does not suggest that such discretion, if it existed, would consistently be exercised in an appropriate way. We have a case in which DHS has for years been opposing a grant of asylum on these grounds to a young man who, as a child of 14, was forcibly conscripted into the army of the government that had previously jailed and tortured him. He was sent to the front, where, under threat of death, he was made to shoot in the direction of people in the distance who may or may not have been civilians. He does not know if he hit anyone. He does know that another child who refused to shoot was executed before his eyes, as was another child who tried to escape. The only reason the U.S. government knows any of these facts is because the young refugee described them, spontaneously and in detail, in his application for asylum. Although he has been living a peaceful and productive life in the United States ever since, he has been left to recover from the trauma of his childhood under an ongoing threat of deportation.

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The failure to recognize defenses to grounds of exclusion from refugee protection is particularly tragic in the case of child soldiers, because it is causing our own legal system to replicate the stigmatization too many of these young people already face in their own communities. When one has to explain to an adult refugee that our government is going to see the ransom she paid for the return of her child, or the food she served to armed men who invaded her house, as a ground for denying her protection, the reaction is generally one of weary disbelief. In the case of a child, it may just be weariness. Children who are demobilized or escape from service in armed groups and try to return home often face hostility from their communities of origin, which impute to the children the worst acts of the groups of which they were part, and fail to treat them as the children they are or were. This is an understandable reaction in villages traumatized by war. But it should not be the refugee policy of the U.S. government.

Beyond the harm this approach can do to children's chances for refugee protection, it also tends to undermine international and U.S. efforts to condemn and prevent the use of child soldiers, and to characterize such abuses as violations of the rights of the children in question. Furthermore, these interpretations, which have been gaining increasing public exposure as they wreak havoc on the U.S. refugee resettlement system, may also discourage U.S. government and NGO efforts to fund and provide rehabilitation and humanitarian assistance to former child soldiers. Providing "material support" to a person who has "engaged in terrorist activity" is itself considered "terrorist activity" under the INA, and the government's interpretations of the term "material support" have thus far failed to set any limits to what kinds of assistance it may subject to this label. While most reasonable people would assume that providing food, shelter, counseling, and education to demobilized child soldiers could not possibly be considered "material support to terrorists," the Department of Homeland Security is currently seeking to deport two asylum seekers whose "material support to terrorism" consisted in providing medical care--and under duress--to injured members of terrorist organizations that had abducted them.

In order to ensure that the harm former child soldiers have suffered is not turned into a basis for denying them the protection they need, one of two things must happen. Either the Executive must alter its legal interpretation of the existing statute to recognize defenses and allow a case-by-case assessment of a child's responsibility for excludable acts, or the existing statute must change. The former solution does not appear to be forthcoming, and we would therefore urge Congress to enact legislation to make clear that it did not intend to exclude from protection refugees who were not responsible for their actions.[1]

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[1] Statutory change is also necessary to narrow the definition of "terrorist activity," which, as noted earlier, is currently being applied to any use of armed force by non-state actors, and is being used to characterize as "terrorist organizations" under the immigration laws groups that pose no threat to the security of the United States and have never been described as "terrorist organizations" by the U.S. government in any other context. This testimony focuses on the changes necessary to allow for a case-by-case evaluation of defenses in asylum and refugee cases because this is typically the main issue in child soldier cases.

III. Excluding the Perpetrators: Grounds for Exclusion or Removal of Those who Use Child Soldiers

Most military commanders who conscript or use child soldiers are barred from the United States and from all immigration benefits under current law, as people who have engaged in terrorist activity, as members of terrorist organizations, as persons who have endorsed or supported terrorist activity, as representatives of terrorist organizations, or as some combination of these things. Many of them are also barred from asylum as persecutors of others. Those who send 12-year-olds to fight their wars are appropriate targets of these bars under international law, and U.S. immigration law generally provides ample basis to keep them out.

One gap in this scheme of exclusion, however, is that those who conscripted children into their national armies or used children as fighters for the state in violation of international law are not covered by the terrorism-related grounds of inadmissibility—or clearly covered by any other inadmissibility ground. One element of the very broad definition of "terrorist activity" under the INA—and the only element that the U.S. government has been reading narrowly—is that the activity be "unlawful." The administrative agencies charged with enforcing these provisions interpret this to exclude state actors.

Child conscription, however, is not only a practice of rebel armies. Government forces do it too, in countries ranging from Burma to the Congo. Those responsible, while they may be barred as persecutors of others if they should apply for asylum, and will be inadmissible in any status if they have engaged or assisted in or incited torture or extrajudicial killing, are not subject to inadmissibility by virtue of their conscription of children alone. This gap could easily be closed by making the recruitment of children and the use of children in armed conflict in violation of international law a ground of inadmissibility and deportability under our immigration laws. Such a provision should be carefully crafted to avoid the nightmare of unintended consequences we are currently experiencing under the terrorism bars.

Conclusion

The United States must bring its laws and administrative procedures into line with the Refugee Convention and the U.S. tradition of extending protection to those who flee from persecution. If the Departments of Justice and Homeland Security fail to recognize defenses to bars to asylum and refugee protection implicit in the current statute, Congress should make these explicit in the relevant provisions of the Immigration and Nationality Act. Progress on this issue is urgently needed in order to ensure that our refugee laws do not continue to exclude and stigmatize those they were intended to protect.

Thank you, Mr. Chairman. I look forward to answering any questions Members of the Subcommittee may have.

STATEMENT

OF

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Hearing before the
Senate Judiciary Committee
Subcommittee on Human Rights and the Law
On

"Casualties of War: Child Soldiers and the Law"

Tuesday, April 24, 2007
Dirksen Senate Office Building, Room 226

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Good morning, Mr. Chairman.

Thank you for inviting me to testify at this important hearing. I also want to thank you for your ongoing leadership and commitment to protect children, both here in the United States and abroad.

My colleagues on the panel already have provided a wealth of information on the topic of child soldiers and illuminated both the legal and very personal impact that this issue has around the world. My goal today is to provide the committee with the perspective of an operational humanitarian organization on this topic, including an overview of our programs and our challenges. In addition, I would like to provide a few thoughts as an advocate here in Washington, D.C.

First, let me profile the organization that I represent. World Vision is a Christian humanitarian organization. Founded in 1950, World Vision today is the largest, privately-funded, international humanitarian organization based in the United States, and one of the leading nongovernmental organizations in the world. We have 23,000 staff serving the poor in nearly 100 countries.

In 2006, through emergency relief, community development and child sponsorship programs, World Vision provided hope and assistance to more than 100 million people in 97 countries.

As a child focused organization, it is imperative and inescapable that we address several forms of child exploitation, including children used in combat. Our work with "child soldiers" has focused on prevention, demobilization, rehabilitation and reintegration of child soldiers.

It is an exceedingly difficult problem to address. Many of these children are forcibly recruited by either rebel groups or state-run military organizations. Many are exploited as a result of their poverty, wherein desperation and the reward of food draw them into military service. All are vulnerable. Children suffer higher mortality, disease and injury rates in combat situations than adults. The lasting effects of war and abuse may also remain with them long after the shooting stops.

Both girls and boys are often stigmatized and traumatized by their experience, as many are forced to commit atrocities against their own families and communities. And sometimes they are left with neither family connections nor skills to allow them to transition successfully into productive adult lives.

Specific World Vision interventions usually include:

- Assessing the physical and emotional condition of former child soldiers and providing medical attention and psycho-social support;
- Providing protective shelter where children can meet with other children to experience their grief and loss together;
- Coordinating with other agencies for family tracing and reunification;

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- Raising awareness in communities about the need to protect children from exploitation;
- Sensitizing communities for child reintegration and follow-up on children who have been reintegrated;
- Providing educational and skills training opportunities;
- Addressing the specific needs for girls who have been affected by armed conflict (i.e. sexual abuse and the consequences, including pregnancy and sexually-transmitted diseases);
- Advocating with warring parties to urge peace and the release of child soldiers;
- Organizing and training children to become their own community advocates for peace.

Prevention is key.

One of our strongest programs is located in northern Uganda. In Gulu, a northern district of Uganda, World Vision runs the Children of War Program, which includes a counseling center for former child soldiers and adults who were abducted as children. It is the largest, most well-established rehabilitation center in all of Uganda. Opened in 1995, the Children of War Center provides formerly abducted children with temporary shelter, AIDS education, food, medical treatment, psycho-social counseling, vocational training, spiritual nurture and facilitates a smooth reunion of the children with their families. More than 15,000 children and adults have passed through the center.

Let me give you an idea of the kinds of situation we work with.

You are likely aware of the 21-year conflict in Northern Uganda. This conflict has terrorized the region, destroyed the lives of an entire generation of children and hindered overall development of the country. Notably, according to Human Rights Watch and the Coalition to Prevent Child Soldiers, the northern Uganda conflict today has one of the highest rates of child soldier usage in the world.

For the past 21 years, the children of northern Uganda have been made pawns in a deadly game of war between the Lord's Resistance Army (LRA) and the Government of Uganda. Well more than 25,000 children have been used as child soldiers in this conflict.

The face of this war in northern Uganda is children. More than 80 percent of the rebel "Lord's Resistance Army" is made up of abducted children. There are allegations that the Ugandan Army (or UPDF – Ugandan People's Defense Force) has used child soldiers, as well. For years, there has been mass hostage taking by the LRA, where tens of thousands of children have been abducted and forced to become soldiers — to become "kill or be killed" mercenaries.

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And in the case of girls, they have double duty: serving as both soldiers and sex slaves for senior adult commanders. In many cases, they have been forced to bear several children for those who repeatedly rape them.

This environment has resulted in stories like that of "William," an 11-year-old boy in Uganda who was forced to kill five people as part of his indoctrination by the LRA, which he served for two years. The first time he killed someone, he, along with other children, were forced to bite to death one child who had attempted to escape from the LRA. After the victim died of blood loss and shock, William and others were then required to swallow the dead child's blood. It was a warning to him and to the others not to try to escape, or they would face the same torture.

I also want to tell you about Grace Akallo, a former child soldier who testified on behalf of World Vision before the U.S. House of Representatives last year. In October 1996, the LRA attacked St. Mary's College, a girls' boarding school in Aboke Town, northern Uganda. They abducted 139 girls -- including Grace. She was 15-years-old at the time. She and the other girls captured with her were trained to assemble and disassemble, clean and use guns. The LRA and northern Sudanese government soldiers used them as slave labor. Grace and her classmates were forcibly given to senior LRA commanders as so-called "wives" and repeatedly raped. Five of Grace's friends died in captivity, many are infected with HIV, and, eleven years later, two of her friends are still held hostage by the LRA.

Both William and Grace eventually escaped and received support.

As documented in our report, *Pawns of Politics: Children, Conflict and Peace in Northern Uganda,* this 21-year war has cost an estimated $100 million dollars per year, and has more than doubled HIV rates in surveyed, war-affected areas. Unofficial rates for Uganda are at around 5 percent, but our research in certain areas shows that HIV rates are at 11.9 percent — more than double the national average. [In these areas, 69 percent of deaths are due to HIV, and not direct conflict.]

With the support of the United Nations and countries from the Africa region, peace talks are now underway between the warring parties. People are hopeful that this may lead to peace, but after 21 years of death, destruction and broader regional instability in southern Sudan and eastern Democratic Republic of the Congo, major donors need to maintain an active presence and support for these talks. In particular, all parties involved have requested the presence of the United States at the talks, to ensure success.

Uganda is just one chapter in this story.

Unfortunately, similar, situations exist around the world. Today, an estimated 250,000 children are serving in armed conflict in 20 countries around the world. These "child soldiers" include boys and girls, sometimes as young as eight years old, serving in government armies, government-linked militias, and armed opposition groups. They serve in all aspects of contemporary warfare — as spies, messengers, guards, cooks, porters, security officers and, too often, as front-line combatants.

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The challenges for NGOs working on this issue in the field are plenty:

- Limited influence in getting children demobilized;
- Implementing programs in conflict settings;
- Treating deep psychological trauma and significant physical wounds of victims;
- Preventing children from "re-recruitment;"
- Protecting children from retaliation;
- Reunification of children with their families or communities where they have forcibly committed atrocities.

More specifically, challenges for reintegration include:

- Continued conflict and instability. In places like northern Uganda, children are returning back to insecure settings where they were initially abducted. Therefore, they are vulnerable to re-abduction and re-recruitment;

- Lack of educational and vocational opportunities for returning child soldiers also makes these children vulnerable to re-recruitment. Many returning child soldiers resort to joining gangs or getting involved in criminal activity, prostitution or survival sex -- wherein countries with high HIV prevalence, such risky behavior further increases the spread of the virus;

- Girls who give birth to children as a result of child soldiering have a particularly difficult time reintegrating back into their communities, which makes their recovery more difficult. They are frequently rejected by their families because they are viewed as "defiled;"

- Lack of adequate funding for psycho-social programs and community follow up.

All of this occurs with the backdrop of violent conflict.

While organizations like World Vision can continue to work to protect and rehabilitate children, our ability to mitigate or resolve conflict is limited. We can stop the bleeding and help heal physical and emotional wounds when the children are in our care, but we can't stop the war or change the policies of the governments or organizations that use children in combat.

From our perspective, the international community, especially world leaders such as the U.S., can and should play a more engaged role through diplomatic efforts, funding programs, assisting peace negotiations and leveraging resources.

Over the years, the U.S. Government has provided millions in program funding, ratified treaties and passed relevant resolutions and bills. For example:

- The United States is a party to international treaties banning the use of child soldiers, including the Optional Protocol to the Convention on the Rights of the Child on the

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Involvement of Children in Armed Conflict (ratified by the U.S. in 2002) and ILO Convention 182 on the Worst Forms of Child Labor (ratified in 1999).

- The United States has enacted the Trafficking Victims Protection Act of 2000.

- Both chambers of the United States Congress have made clear their position on this issue in recent years as articulated in a series of resolutions, "Expressing condemnation of the use of children as soldiers and the belief that the United States should support and, where possible, lead efforts to establish and enforce international standards designed to end this abuse of human rights" (S. CON. RES. 72, H. CON. RES. 348, H. CON. RES. 209, H. CON. RES. 309, H. CON. RES. 202).

- Section 502B(a)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2304(a)(3)) provides that "the President is directed to formulate and conduct international security assistance programs of the United States in a manner which will promote and advance human rights and avoid identification of the United States, through such programs, with governments which deny to their people internationally recognized human rights and fundamental freedoms, in violation of international law or in contravention of the policy of the United States as expressed in this section or otherwise."

Most recently, actually last week, the United States Senate, under your leadership Mr. Chairman, introduced another piece of legislation that provides a key element of a strategy to combat this problem.

As you know, while many child soldiers are found among armed non-state actors, the State Department reports that governments in 10 countries are implicated in child soldier use. Some of these governments recruit children into their own armed forces, while others are directly linked to militias that use children in warfare.

The U.S. government provides military assistance to nine of them, ranging from small amounts of funding for military training to hundreds of millions in weapons, training and military financing.

I'm confident that most taxpayers would agree that U.S. tax dollars should not be used to support the exploitation of children as soldiers. I'm confident that no American would want to see small arms in small arms. Moreover, U.S. weapons should not end up in the hands of children.

You and Senator Brownback have introduced the **Child Soldier Prevention Act of 2007 (s. 1175)** to encourage governments to disarm, demobilize and rehabilitate child soldiers from government forces and government-supported paramilitaries by restricting various forms of U.S. military assistance provided to these governments until they end any involvement in this practice.

The bill takes into account that there may be circumstances that require flexibility in the implementation of this bill in order to allow for strategic military engagement or diplomatic positioning. Therefore, the bill allows that countries that take concrete steps to demobilize child

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soldiers be eligible for U.S. assistance solely for the professionalization of their armed forces for up to two years before any additional prohibitions on assistance would be imposed. The bill provides the President with the authority to waive prohibitions if he determines that such a waiver is in the best interests of the United States. Moreover, the bill encourages the United States to work with the international community to bring to justice armed rebel groups that kidnap children for use as soldiers.

Rightly, this bill is directed at national governments that receive U.S. military assistance to help them professionalize their forces and to ensure that U.S. taxpayer dollars are not used to finance the exploitation of children in armed conflict.

The legislation is in alignment with the standards that the United States has accepted for its own armed forces under the Optional Protocol on the Involvement of Children in Armed Conflict, which the United States ratified in 2002. It is also in our own national security interest to reduce the incidence of child soldiers in the world: our commanders do not want their troops to confront the specter of an armed child in a combat situation.

This bill will both underscore the importance of the issue within United States foreign policy and provide concrete means to help countries end their reliance on children as soldiers.

We at World Vision believe this bill will provide strong incentives for foreign governments to end any involvement in the recruitment and use of child soldiers. It also encourages the United States to expand funding to rehabilitate former child soldiers and work with the international community to bring to justice rebel leaders that kidnap children for use as soldiers.

Mr. Chairman, I applaud you for your leadership on this very important piece of legislation and on human rights issues around the world. We at World Vision stand ready to work with you on our common goals.

In addition to these efforts, I would like to make an appeal for the following:

1. High-level Engagement by the U.S. Government: Members of Congress, the Administration and international leaders must use their political influence to help end the use of child soldiers around the world.

2. Commit U.S. leadership to mobilizing the international community in order to put global pressure on combatants to protect children and to end conflict.

3. Provide more resources to help people suffering because of conflict.

Thank you. I look forward to your questions.

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Testimony of Kenneth Roth
Executive Director, Human Rights Watch
before the
Senate Judiciary Subcommittee on Human Rights and the Law

Hearing on "Casualties of War: Child Soldiers and the Law"
April 24, 2007

Thank you, Mr. Chairman. Human Rights Watch welcomes the creation of a standing Senate committee focused on issues of human rights and the law, and appreciates the opportunity to testify before you today. Thank you for focusing on the exploitation of children as soldiers around the world.

Human Rights Watch has investigated the recruitment and use of children as soldiers in over a dozen countries since 1994. We have documented the recruitment of children as young as eight into both paramilitary and guerilla forces in Colombia, the kidnapping of children by the Lord's Resistance Army in Northern Uganda, including the use of girls as sex slaves, and abduction of children by both the Tamil Tigers and government-linked armed groups in Sri Lanka's escalating civil war. Human Rights Watch has conducted other investigations on the use of child soldiers in Angola, Burma, Burundi, Chad, Cote d'Ivoire, D.R. Congo, Lebanon, Liberia, Rwanda, Somalia, and Sudan. Our research has found that this is a global problem, affecting girls and boys on nearly every continent. The perpetrators include government armies, armed opposition

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groups, and paramilitaries and militias linked to government forces. No one knows the exact number of child soldiers, but the United Nations estimates there may be as many as 250,000 worldwide.

While many children are recruited by force, others join armed groups out of desperation. As communities break down during war, children are often separated from their families, driven from their homes, and left with no opportunity to go to school. In situations of extreme insecurity, many believe that joining an armed group is their best chance of protection or survival.

Regardless of how children are recruited, the military commanders that exploit them as soldiers put them at extreme risk. Many child soldiers participate directly in hostilities, and even those serving in support roles can be legitimate targets of attack, and may be subject to injury, disability, and death. Child soldiers are often exposed to extreme levels of violence that result in life-long emotional and psychological scars.

I want to focus my testimony on three aspects of the child soldier issue: first, holding perpetrators accountable for the recruitment and use of child soldiers through criminal prosecution; second, opportunities for the United States to use its military assistance programs as leverage to discourage the recruitment or use of children by foreign governments; and finally, the unintended consequences of US immigration laws that define current and former child soldiers as "terrorists" and bar their admission to the United States.

One of the reasons why child recruitment has persisted as an awful aspect of contemporary warfare is the impunity enjoyed by individual recruiters. While many governments and even non-state armed groups have policies on paper stating that their minimum age of recruitment is 18, recruiters who violate these policies are rarely held accountable. As a consequence, recruiters continue to prey upon children, as these are often the most vulnerable recruits, and the most susceptible to threats and coercion.

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In the last decade, however, some progress has been made in establishing criminal responsibility for these acts. The recruitment and participation in hostilities of children under the age of 15 was first prohibited by the 1977 Additional Protocols to the Geneva Conventions. In 1998, governments negotiating the Rome Statute of the International Criminal Court recognized that this prohibition had achieved the status of customary international law. They agreed that the conscription, enlistment, or use in hostilities of children under the age of 15 should be considered a war crime under the Court's jurisdiction, whether carried out by members of national armed forces or non-state armed groups. Significantly, delegates drafting the treaty agreed that the Statute's definition would apply not only to the use of children for direct participation in combat, but also their active participation in military activities linked to combat such as scouting, spying, sabotage, their use as decoys, couriers, or at military checkpoints, and direct support functions such as carrying supplies to the front line.

In May 2004, international jurisprudence on this issue advanced further when the Appeals Chamber of the Special Court for Sierra Leone ruled that the prohibition on the recruitment and use of children below age 15 had crystallized as customary international law prior to 1996, and found that the individuals responsible bear criminal responsibility for their acts. In its decision, the Court stated that:

> The practice of child recruitment bears the most atrocious consequences for the children. Serious violations of fundamental guarantees lead to individual criminal responsibility. Therefore the recruitment of children was already a crime by the time of the adoption of the 1998 Rome Statute for the International Criminal Court, which codified and ensured the effective implementation of an existing customary norm relating to child recruitment rather than forming a new one.

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With these developments, individual commanders now have begun to be prosecuted for the crime of recruiting and using child soldiers. The most active pursuit of child recruitment cases has come through the Special Court for Sierra Leone, a court which benefits from major support by the United States. The use of child soldiers is included in the indictments against each of the nine defendants currently being tried by the court, including leaders of the Civil Defense Forces, the Armed Forces Revolutionary Council, and the Revolutionary United Front, and former Liberian President Charles Taylor. The first decisions by the court are expected within the next couple of months, which could result in the very first convictions by an international judicial body for the crime of using child soldiers.

The International Criminal Court recently initiated prosecution against Thomas Lubanga of the Democratic Republic of Congo (DRC), paving the way for its first-ever trial of war crimes. Lubanga is charged with enlisting and conscripting children as soldiers and using them to participate actively in the conflict in Ituri, in the eastern DRC. He is currently in custody in The Hague, awaiting trial.

As trials proceed, convictions are handed down, and these cases become known, Human Rights Watch hopes that such prosecutions will send a clear message that child recruiters bear criminal responsibility for their actions, and that the consequences could entail a lengthy jail sentence. Only when individuals are held accountable through the rule of law will we establish a successful deterrent to the recruitment and use of child soldiers.

However, international tribunals or hybrid courts such as the Special Court for Sierra Leone can try only a very small number of perpetrators, and have limited jurisdictions. Yet, so far, national courts have barely played a role in prosecuting these crimes. The only known example of criminal prosecution at the national level is from the DRC, where in March 2006 Jean Pierre Biyoyo, a leader with an armed group known as Mudundu 40, was sentenced to five years in prison for child recruitment and illegal

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detention of children in South Kivu in April 2004. However, he later escaped from prison and remains at large.

A limitation to the current state of the law is that very few countries have criminalized the recruitment or use of child soldiers under their national criminal code. Here in the United States, the Federal Criminal Code does not address the issue of child recruitment, nor allow prosecution of an individual who has recruited or used child soldiers in another country and then attempts to take safe haven in this country. If the United States were to amend its criminal code to criminalize the recruitment and use of child soldiers committed here or abroad by either US citizens or non-citizens present in the United States, that would provide an important avenue to hold these perpetrators accountable.

Precedent for this already exists in federal law. For example, Chapter 113c of Title 18, the Crimes and Criminal Procedure of the US Code makes it a crime for torture to be committed abroad irrespective of the nationality of the victim or alleged offender where the alleged offender is present in the US. The provision imposes severe criminal penalties on "whoever outside the United States commits or attempts to commit torture." Jurisdiction over this crime applies whether the alleged offender is a national of the United States, or is present in the United States, irrespective of the nationality of the victim or alleged offender. (Sec. 2340A.) The first person to be charged under this law, Charles "Chuckie" Taylor, Jr., son of former Liberian president Charles Taylor, was indicted in December 2006 and is currently on trial in Miami.

Another precedent, Mr. Chairman, is the Genocide Accountability Act, which you introduced and was just adopted by the US Senate on March 29 of this year. This act, which Human Rights Watch supports, amends the Genocide Convention Implementation Act to allow prosecution of non-US nationals who are in the US for acts of genocide committed outside the United States.

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Mr. Chairman, I urge this committee to consider action to amend the US criminal code to make the recruitment or use of children in violation of international law a punishable crime, whether committed here or abroad, and to establish jurisdiction over US citizens or non-nationals present in the United States who commit this crime.

The scope of this law should encompass the most current international law. In 2000, the United Nations adopted the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, obliging governments to take all feasible measures to ensure that members of their armed forces that have not attained the age of 18 do not take a direct part in hostilities, and prohibiting any compulsory recruitment of children under the age of 18 into governmental armed forces, or any recruitment (whether forcible or "voluntary") or use in hostilities of children under age 18 by non-state armed forces. The Optional Protocol allows government armed forces to accept volunteers into their armed forces from age 16, with certain safeguards such as parental permission and informed consent.

The United States ratified this treaty in December 2002, and subsequently, the US armed forces adopted new deployment policies to prevent the use of seventeen-year old soldiers in combat situations. In fact, in order to meet US legal obligations, the policies adopted by the armed services are quite restrictive: the US Army's policy is not to assign or deploy soldiers less than 18 years of age outside of the continental United States, Puerto Rico or territories or possessions of the United States. The US Navy will not assign members under age 18 to commissioned vessels or operational squadrons. Instead, it will extend training or assign soldiers to shore duty until they turn 18.

Over 110 other states have also ratified the Optional Protocol, establishing a new global standard of 18 as the minimum age for any forced recruitment or participation in hostilities. This threshold provides greater protections to children who are increasingly vulnerable in wartime

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situations and is consistent with other international law protecting children from exploitation and abuse.

Consistent with the US' own policies and practices, US law should criminalize any recruitment or use of child soldiers in violation of international law. This would include any forced recruitment of children under age 18, and any recruitment (whether forced or "voluntary") into non-state armed groups. This would enable the United States to prosecute military commanders who exploit children as soldiers abroad, and then seek refuge in this country. It would also enable the United States to prosecute individuals who may attempt to recruit children from the United States to fight in foreign conflicts. Such recruitment from Western countries is not unknown: in the late 1990s, for example, the Kurdistan Workers' Party (PKK) recruited children from schools in Sweden to serve in PKK forces in southeast Turkey.

The second issue I would like to address, Mr. Chairman, is the opportunity that the United States government has to use its military assistance programs as leverage to demand accountability from foreign governments that may be involved in the recruitment or use of children as soldiers.

A common misperception is that child soldiers are found only in rebel armies. But in fact, the biggest recruiter of child soldiers in the world is Burma's national army, which for many years has forcibly recruited tens of thousands of boys into its ranks. In a 2002 investigation, Human Rights Watch found that recruiters often preyed upon boys as young as eleven, threatening them with jail if they refused to join the army. They were often beaten during training, brutally punished if they tried to escape, and once deployed, used in combat against ethnic armed groups and to commit war crimes against civilians.

The most recent State Department Human Rights Country Reports found that of the twenty countries around the world where children are currently fighting as soldiers, governments are implicated in ten of these situations.

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These include: Afghanistan, Burma, Burundi, Chad, Colombia, DRC, Cote d'Ivoire, Sri Lanka, Sudan, and Uganda. In some of these cases, governments recruit children directly into their own armed forces, while in others, governments are directly linked to militias or paramilitaries that recruit and use children.

I would like to provide several examples:

Colombia: An extensive investigation by Human Rights Watch in 2002 concluded that as many as 11,000-14,000 children belonged to parties to Colombia's armed conflict, including both guerilla forces and paramilitaries with longstanding ties to Colombian military units. The paramilitaries have recruited children as young as eight to fight against the guerillas, sometimes forcing them to mutilate and kill captured rebels. Once admitted into paramilitary ranks, children who attempt to desert risk capture and execution by their commanders as suspected infiltrators or informers. Some of the children we interviewed described in detail counter-guerrilla operations in which paramilitaries had worked in close harness with government military units. The U.S. Congress recently placed a hold on a portion of US military assistance to Colombia out of concern over alleged links between the head of the Colombian Army and paramilitaries.

Democratic Republic of Congo: At the height of DRC's conflict, the United Nations estimated that 30,000 children were participating on all sides of the war. Many children have been demobilized, but the recruitment and use of child soldiers continues. Just last month, Human Rights Watch researchers documented the recruitment and use of children as soldiers by newly formed Congolese army (FARDC) brigades in North Kivu. International and local child protection workers estimate that hundreds of children, some as young as 13, currently serve in the brigades in North Kivu, and are being deployed to the front line in operations against local armed groups.

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Uganda: In Northern Uganda, the Lord's Resistance Army has abducted tens of thousands of children into its forces to fight against the Ugandan government. This phenomenon has received substantial international attention. However, Ugandan government forces also recruit children. Last year, the United Nations reported that over 1,000 children had been recruited into government-supported Local Defense Units in the northern districts of the country. Children have also been found in the ranks of the national army, the Uganda People's Defense Force (UPDF). Human Rights Watch researchers have interviewed children who escaped the Lord's Resistance Army, but just days later, were offered cash and new uniforms if they joined the UPDF.

Sri Lanka: The separatist Liberation Tigers of Tamil Eelam (LTTE) are well-known for recruiting thousands of boys and girls during more than twenty years of fighting against the Sri Lankan government. But as the armed conflict has escalated in the past year, we have seen a disturbing new development. The Karuna group, an armed faction that split from the LTTE in 2004 is now fighting the Tamil Tigers with government support. Over the past year, the group has abducted hundreds of boys into its forces with the complicity of the government. Government forces carry out joint patrols with the Karuna group, and allow Karuna cadres transporting abducted children unrestricted passage through government checkpoints. UN requests for a government investigation into the government's complicity in child abduction by the Karuna group have been met with inaction.

The United States is in a unique and influential position to end such use of child soldiers. Nine of the governments implicated in child soldier use, including each of the four cases just cited, receive military assistance from the United States. The US government can use this assistance as leverage to press for an effective end to all recruitment and use of child soldiers by these governments.

Mr. Chairman, the Child Soldier Prevention Act of 2007 introduced last week by you and Senator Brownback would provide other governments

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with real incentives to end any involvement in the use of child soldiers and to demobilize children from their forces. The Child Soldiers Prevention Act restricts five categories of military assistance (International Military Education and Training, Foreign Military Financing, Foreign Military Sales, Direct Commercial Sales, and Excess Defense Articles) to governments that have been identified by the State Department's annual country reports on human rights practices around the globe as using child soldiers in their own armed forces or supporting paramilitaries or militias that use child soldiers. As its yardstick, the bill uses the Optional Protocol, the same international legal standard that the US applies to its own armed forces.

The Act takes a measured approach. It does not automatically cut off military assistance to governments involved in child soldier use. Governments that take concrete steps to end child recruitment and demobilize child soldiers would be eligible for up to two years for assistance directly solely towards professionalization of their forces. Governments that fail to take any action to remedy their involvement in child recruitment or use would be ineligible for military assistance.

US military assistance to governments involved in the use of child soldiers currently ranges from small amounts of funding for military training for Burundi, Chad, and Cote d'Ivoire to hundreds of millions in weapons, training, and military financing for Colombia (twenty-five percent of which is currently on hold). While the amount of US military assistance is often not large, the loss of US military backing would be politically very embarrassing to these governments, and a strong motivator to end any involvement in child recruitment.

The bill also recognizes that there may be situations where continued US military assistance to a country is in the interests of US national security. Therefore, the Act provides the President with the authority to waive the prohibitions in the act, if he or she believes it is necessary for national security.

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Mr. Chairman, global adherence to international standards not only protects children from the risks and horrors of involvement in armed conflict, but is also in the interests of US national security, as the reduction of underage soldiers around the globe makes it less likely that US soldiers deployed overseas will find themselves in the agonizing position of facing an armed child in the field of combat.

Of course large numbers of child soldiers are found in rebel armies that receive no US support and have no link to the United States or its military allies. But there is little hope of curbing child recruitment by rebel armies as long as they can justify their use of children by pointing to child recruitment by governments. The stronger we can make the international norm against the use of child soldiers, the harder it will be for rebel groups to pay the political price of using them. That norm-building process must begin with governments.

The Child Soldiers Prevention Act would provide a powerful incentive to governments to end the recruitment and use of child soldiers and demobilize children from armed forces. It would also assure the American people that US tax dollars are not supporting the exploitation of children as soldiers.

Finally, I want to address the unintended consequences of US immigration laws that are defining current and former child soldiers as "terrorists" and barring their admission to the United States. Children once conscripted into the Lord's Resistance Army, the Liberation Tigers of Tamil Eelam, or Revolutionary United Front, to name just a few examples, are forever prohibited from entering the United States, even if they have escaped the throes of their captors and successfully completed a US or UN-funded rehabilitation program.

This is the result of overbroad terrorism-related bars on admission enacted as part of the USA Patriot Act. Under these laws, anyone who has ever received military training from any terrorist group (broadly defined), and anyone who has ever picked up arms or fought alongside such group is

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forever barred admission to the United States. And there are no exceptions.

Thousands of vulnerable refugees and asylum seekers have already been turned away from the United States because of these and related bars. These are bars so broad that they are defining Hmong and Montagnards as terrorists *because* they took up arms alongside the United States during the Vietnam war, rape victims as terrorists *because* they cooked and cleaned for the armed rebels who enslaved them, and medics and nurses as terrorists *because* they tended to wounded rebels in accordance with their ethical duties.

Language that was included in the Senate version of the Iraq supplemental would have largely resolved this problem. It would have granted the administration the discretion – discretion that the administration itself asked for – to waive these bars in deserving cases to protect vulnerable individuals, such as former child soldiers. And it would have included a duress exception, thereby ensuring that those forced against their will to provide food, water, or services to armed rebels would no longer be barred as terrorists. But the legislation was stripped out at the last moment on a point of order.

I urge Congress to find a way to enact the legislation that was included in the Senate version of the Iraq supplemental and to do so quickly. We all recognize the vulnerability of children, and the tragedy of such young persons being forcibly swept up by terrorist groups and compelled to take on the role of combatant. It makes no sense for US law to turn these young victims into international pariahs by forever labeling them terrorists, even if they have long since rejected their abductors.

Thank you, Mr. Chairman.

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